1939

SUPREME COURT OF THE UNITED STATES.

No. ~~242.~~ 121.

SAMUEL R. CURTIS AND AL., APPELLANTS,

VS.

WILLIAM D. BROWN.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEBRASKA.

GOVERNMENT PRINTING OFFICE.

1901

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No. 242.

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vs.

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1943

1 UNITED STATES OF AMERICA, *Territory of Nebraska, ss:*

Proceedings had in the supreme court of the Territory of Nebraska, at the November special term thereof, begun and held at the capital of said Territory, on the 13th day of November, in the year of our Lord, one thousand eight hundred and sixty-one, and at which were present the following named officers of said court:

Honorable Wm. F. Lockwood, associate justice; honorable Joseph E. Streeter, associate justice; David L. Collier, esq., attorney for the United States; P. W. Hitchcock, esq., marshal of said Territory; J. H. Kellom, esq., clerk of said court.

WILLIAM D. BROWN, appellant,
vs.
SAMUEL R. CURTIS, HENRY Z. CURTIS, SAMUEL S. CURTIS, AND THE COUNCIL BLUFFS & NEBRASKA FERRY COMPANY.

Be it remembered, that on the 12th day of November, one thousand eight hundred and sixty-one, came into the said supreme court the said William D. Brown, appellant, by James M. Woolworth, esq., his solicitor, and filed 2 in the office of the said clerk of said court a transcript of the record of certain proceedings, duly had and taken in the district court of said Territory, for the first judicial district and county of Douglas, a true copy of which transcript is hereto annexed and marked Exhibit "A."

And afterwards, at the aforesaid November special term of said supreme court, and on the 27th day of November, one thousand eight hundred and sixty-one, honorable Wm. F. Lockwood, associate justice, and honorable Joseph E. Streeter, associate justice, of said court, presiding, this cause came on duly to be heard and determined upon said transcript, so as aforesaid filed in said court; and thereupon the following proceedings were duly had:

Decree.

WILLIAM D. BROWN, appellant,
vs.
SAMUEL R. CURTIS, HENRY Z. CURTIS, SAMUEL S. CURTIS, AND THE COUNCIL BLUFFS & NEBRASKA FERRY COMPANY.

This cause having come on to be heard upon the transcript filed therein, was argued by counsel, and the court being fully advised in the premises, it 3 is ordered, adjudged, and decreed, that the order of the district court in chancery, dismissing the bill of complaint of the said appellant, from which this appeal is taken, be, and is hereby, reversed.

And it is ordered, adjudged, and decreed, that the said company admit this appellant to membership in it as an owner of one-eighth of its property and interests; and that the said defendants, Henry Z. and Samuel S., assign to the said appellant these evidences of membership and certificates of stock held by them by virtue of the sale, and transfer thereof to them by said defendant Samuel R., by such means as are by the by-laws of said company required in such cases; and that said Samuel R. make, execute, and deliver to the said appellant a deed or deeds, in due form of law, conveying to him all lots of land in the State of Iowa deeded to him, and now held by him, by virtue of the conditional sale made to him by said appellant, set out in the pleadings in this cause.

And it is further ordered, adjudged, and decreed that the said Samuel R. pay to the said appellant the sum or sums of money realized by him from the sale of lots in the city of Omaha, which had been by said company divided, assigned, and deeded by said company to him, said Samuel R., as a member thereof, under and by virtue of the aforesaid conditional sale, after deducting
from the sum or sums so by the said Samuel R. realized, such sums as
4 he has paid to said company on account of the said interests in said company so by him obtained and held as aforesaid. And it appearing to the court that the said Samuel R. realized from the said sales the sum of five thousand dollars, at or before the filing of the bill of complaint in this cause, to wit: November 20, A. D. 1860, which principal sum and interest amount to five thousand five hundred dollars; and on the 12th day of January, A. D. 1854, paid into said company, on account of said interests, the sum of two hundred dollars; and on the 19th day of July, 1854, the further sum of four hundred and fifty dollars and forty-seven cents; and on the 3d day of February, 1855, the further sum of one hundred eighty-seven dollars and fifty cents, all of which sums, with interest to the date of this decree, amount to the sum of fourteen hundred and sixty-five dollars and twenty-five cents, this court finds the sum due from the said Curtis to said appellant to be four thousand thirty-four dollars and seventy-five cents.

And it is ordered that execution in favor of the said appellant issue against the property of said Samuel R. for the said sum, with accruing interest thereon, and that the said defendants pay the costs of this suit to be taxed.

5 And thereupon the said defendants excepted to the finding of the court, and gave notice of an appeal to the Supreme Court of the United States, and prayed the allowance thereof by the court, which was granted.

J. E. STREETER,
Associate Justice, Supreme Court.
W. F. LOCKWOOD,
Associate Jus., Sup. Court.

And thereupon, afterwards, to wit, on the 17th day of December, one thousand eight hundred and sixty-one, came into the said supreme court the said Samuel R. Curtis *et al.*, appellees, by George B. Lake, esq., their solicitor, and filed in the office of said clerk of said court their bond, which is in words and figures following, to wit:

Know all men by these presents that we, Samuel R. Curtis, Henry Z. Curtis, Samuel S. Curtis, as principals, and George B. Lake and Andrew J. Poppleton, as their sureties, are held and firmly bound unto William D. Brown, of Omaha city, Nebraska Territory, in the just and full sum of three hundred ——, to the payment of which, well and truly to be made, we do hereby bind and
6 oblige ourselves, our heirs, executors, or administrators, firmly by these presents. Sealed with our seals, and dated this 17th day of December, A. D. 1861.

Whereas lately, at a special term of the supreme court of the Territory of Nebraska, in a suit pending in said court between the said William D. Brown, as complainant, and the said Samuel R. Curtis, Henry Z. Curtis, and Samuel S. Curtis, and the Council Bluffs & Nebraska Ferry Company, as defendants, a decree was rendered against the said defendants, who having thereupon, at the same term of the said court, in open court prayed an appeal from the said decree to the Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of the month of December, then next ensuing, and which said appeal was by the said supreme court allowed:

Now the condition of the above obligation is such, that if the said defendants shall well and truly prosecute their said appeal to effect, and answer all costs if they shall fail to make their said pleas good, then the above obligation to be null and void; else, to remain in full force and virtue in law.

SAMUEL R. CURTIS, [SEAL.]
HENRY Z. CURTIS, [SEAL.]
SAMUEL S. CURTIS, [SEAL.]
By GEO. B. LAKE,
Agent and Attorney in fact.
GEO. B. LAKE, *Security.* [SEAL.]
ANDREW J. POPPLETON. [SEAL.]

7 Signed, sealed, and delivered in my presence, and approved by me this 17th day of December, A. D. 1861, at Omaha city, in said Territory.

J. E. STREETER,
Associate Justice, Sup. Ct., Neb. Ter.

THE TERRITORY OF NEBRASKA, *Douglas County, ss:*

I, J. H. Kellom, clerk of the supreme court of the Territory of Nebraska, do hereby certify that the foregoing copy is a true and faithful transcript of all the records and proceedings had in the foregoing cause, so full and entire as the same remain on file and entered of record in this office.

[SEAL.] Witness my hand and seal of said court, at Omaha, this 4th day of February, A. D. 1863.

J. H. KELLOM,
Clerk Sup. Ct.

This transcript, $37.

8 *Exhibit A, being a true copy of a transcript of the record of the district court filed in the supreme court of said Territory, as is above stated.*

9 Territory of Nebraska, first judicial district, county of Douglas.

WILLIAM D. BROWN, appellant,
vs.
SAMUEL R. CURTIS, HENRY Z. CURTIS, SAMUEL S. CURTIS, and THE COUNCIL BLUFFS AND NEBRASKA FERRY COMPANY, appellees.

Be it remembered, that William D. Brown, by James M. Woolworth, his solicitor, came into the district court in chancery of said Territory of Nebraska, for the said first judicial district, sitting within and for the said county of Douglas, and on the 20 day of November, in the year of our Lord one thousand eight hundred and sixty, exhibited therein his amended bill of complaint, impleading Samuel R. Curtis, Henry Z. Curtis, and Samuel S. Curtis, and the Council Bluffs and Nebraska Ferry Company, which said amended bill of complaint was in the words and figures following, that is to say:

10 In chancery.

To the honorable Augustus Hall, judge of the district court of the Territory of Nebraska for the first judicial district and county of Douglas:

Humbly complaining, showeth unto your honor, your orator, William D. Brown, of the city of Omaha, in the county of Douglas and Territory of Nebraska, that the Council Bluffs and Nebraska Ferry Company, one of the defendants in this suit, is a corporation duly incorporated under and in pursuance of a law of the State of Iowa, the same being chapter forty-three of the code of that State, and entitled "Corporations for pecuniary profit," by certain proceedings and articles of association to that end had and entered into by them in pursuance of the said law, and afterward also duly incorporated in virtue of an act of the legislature of the Territory of Nebraska entitled "An act to incorporate the Council Bluffs and Nebraska Ferry Company," approved February 21, 1855.

And your orator further showeth unto your honor, that your orator,
11 prior to the incorporation of said company first aforesaid, obtained from
the proper authorities of the State of Iowa a license to run and keep a ferry across the Missouri river at the point in said articles mentioned, which license, together with his rights thereunder, he sold and surrendered to said company, and said company, by reason thereof, succeeded to your orator's rights aforesaid. That the principal object of said company in acquiring said rights, and in becoming incorporated, and in keeping and running such ferry, was to facilitate intercourse with the lands now the site of the city of Omaha, in said county, and with the Indians occupying the same; and by means thereof and by gratuities by it given to the said Indians, and a license by them obtained from the proper officer of the government authorizing them to go upon said lands, and by other like measures, to anticipate all others in the occupancy of said lands when the Indian title thereto should be extinguished; that by the means aforesaid the said company was enabled to and did anticipate all others in the occupancy of said lands when the said Indian title was extinguished; and it thereupon occupied and very soon thereafter laid out and surveyed the same as a town with lots and streets. That at the time of the formation of said company, and ever since, it was understood and agreed by
and between the members thereof, that the profits which the said com-
12 pany, by means of said ferry, might make, should be applied to the
expenses which the said company might incur in building and improving the said town, and the said profits were from time to time so applied to a large amount, but to what exact amount is unknown to your orator.

And your orator further showeth unto your honor, that the said company were also lawfully seized and possessed of other lands, lying adjacent to the place selected for their ferry, in the said State of Iowa, the precise boundaries of which lands your orator cannot now state.

And your orator further showeth unto your honor, that he was one of the original members and stockholders of the said company, and as such was the owner of one-fourth part of all its property, rights, interests, and claims.

And your orator further showeth unto your honor, that on or about the fifteenth day of August, in the year one thousand eight hundred and fifty-three, your orator entered into articles of agreement, in writing, with Samuel R. Curtis, then of the city of St. Louis, in the State of Missouri, now of the city of Keokuk, in the State of Iowa, one of the defendants in this suit, which said articles of agreement are to the tenor and effect following, that is to say:

13 Know all men by these presents that I, William D. Brown, of the
county of Pottawattimie, in the State of Iowa, party of the first part, in consideration of the payment to me of the sum of money hereinafter stipulated, and the performance of the obligation hereinafter expressed, by Samuel R. Curtis, of the county of St. Louis and State of Missouri, party of the second part, have this day given, granted, bargained, and sold, assigned and set over to the party of the second part, to his heirs and assigns forever, the undivided one-half of my interest in certain ferry lands on the east side of the Missouri river, in the State of Iowa, and adjacent to section lines between sections twenty-eight (28) and thirty-three, (33,) in township seventy-five (75,) and range forty-four, (44,) together with the undivided half of my interest in the ferry privileges exercised at the point aforesaid; also the undivided half of my interest in a certain claim on the west bank of the Missouri river, aforesaid, both of which said interests are held by me in connexion with a certain association or joint stock company, formed by and under certain articles of agreement bearing date 23d

day of July, A. D. 1853, and in which said articles, reference being thereto had, the aforesaid lands, my interest, and the objects of said company, will
more fully appear. To have and to hold the aforesaid interests to the
14 said party of the second part, and to his heirs and assigns forever:
Provided, nevertheless, and the above assignment, transfer, and sale are made on the following condition:

Whereas the party of the first part holds the interest assigned, as aforesaid, as tenant in common of the company aforesaid, now, therefore, if the said party of the second part, during possession of the interest aforesaid, shall well and truly conform to the objects, intents, and interests of the aforesaid company, as regulated and specified in their articles of association aforesaid, shall pay or furnish the proportionate parts, quotas of himself and the said party of the first part, of the means requisite to the making of roads, grades, and fences, and whatever is deemed necessary by the company to secure the claim on the west side of the river; and further, if the said party of the second part shall pay, or cause to be paid, to the said party of the first part, out of the first dividends arising from the proceeds and operations of said company, and coming and payable to the said party of the second part, by virtue of the aforesaid interest as stockholders in said association, the sum of eight hundred dollars, then the above transfer or sale shall be absolute and valid; otherwise, in case of failure on the part of the aforesaid party of the second part to comply with
the terms and conditions hereinafter set forth and specified, the sale,
15 transfer, or assignment shall become of no effect and inoperative, and
all the interests thereby intended to be conveyed shall revert to and become reinvested in the said party of the first part. In testimony whereof, the said party of the first part has hereunto subscribed and set his hand and seal this 15th day of August, A. D. 1853.

(Signed) WILLIAM D. BROWN. [L. S.]
SAM'L R. CURTIS. [L. S.]

And your orator further showeth unto your honor, that, subsequent to the time when your orator entered into said articles of agreement, the said company undertook and executed divers works of improvement for the purpose of promoting their aforesaid design of building the aforesaid town of Omaha, and especially the construction of a road through a deep and, until then, impassable swamp on the lands of the said company last above mentioned, whereby communication between the said city of Omaha and the said State of Iowa was made more easy and expeditious.

And your orator further showeth unto your honor, that said company, by its directors, at a meeting thereof duly and regularly convened on the sixth day of August, 1853, duly levied an assessment upon the shares of its members amounting in the aggregate to twenty-six hundred dollars, and afterward, and
upon days unknown to your orator, levied in like manner other assess-
16 ments upon the shares of its members, all of which assessments were
made for the purpose of raising means to execute the works aforesaid and other improvements, and that the said Curtis utterly failed to pay and discharge his proper quota, according to the terms of the said agreement, of the assessments made upon the shares of the said company for the purpose of defraying the expenses of the said improvements, as in and by the aforesaid articles of agreement he engaged to do; and that, by reason of such delinquency on the part of the said Curtis, your orator was compelled to pay, and did pay, the whole of the said assessments made, as well upon the share so as hereinbefore stated conditionally assigned to the said Curtis, as upon the remaining share of your orator, amounting to the sum of one hundred and fifty dollars.

And your orator further showeth unto your honor, that soon after the date of the said agreement he became, and thenceforth to the present day has continued

to be a resident of the lands now the site of the said city of Omaha; that he removed to the said lands and occupied the same for the sole purpose, by means of his residence thereon, of entitling the said company to hold the same and obtain title thereto under the laws of the United States; that by means of such residence of your orator and of the persons to whom he subsequently sold his remaining shares in the said company upon the said lands, as original proprietors of the said town, the other members of the said company
17 became and were entitled to have the said last-mentioned lands entered
at the proper land office of the United States, under and in virtue of an act of Congress entitled "An act for the relief of citizens of towns upon the lands of the United States under certain circumstances," approved May 23, 1844; but your orator says that neither the said Curtis nor any other member of the said company, except your orator and the persons to whom he sold his remaining interests, ever was, or has until lately been a resident of the said town.

And your orator further showeth unto your honor, that on the nineteenth day of July, eighteen hundred and fifty-four, the members of the said company made a dividend of the lots into which the lands last aforesaid had by them been divided, and that to the said Curtis were set off one-eighth part thereof as and for his dividend as the owner under and in virtue of the said agreement of one-eighth part of the interest of the said company in the said lands, which said lots so set off to the said Curtis were numbered, designated, and known as follows, to wit:

Lot 4, block 169; lot 5, block 167; lot 7, block 165; lot 3, block 152; lot 6, block 150; lot 6, block 148; lot 8, block 135; lot 5, block 123; lot 1, block 121; lot 1, block 119; lot 8, block 106; lot 2, block 104; lot 6,
18 block 139; lot 5, block 137; lot 6, block 102; lot 7, block 108; and
that the said lots were at the date last aforesaid of the value in the market of about fifty dollars each.

And your orator further showeth unto your honor, that very soon after the aforesaid dividend was made by the said company, your orator applied to the said Curtis to pay your orator the sum of eight hundred dollars, by him, as hereinbefore stated, agreed to be paid when the first dividend should be made by the said company, but the said Curtis neglected and altogether failed to pay the same or any part thereof, by reason whereof, and of his other aforesaid delinquencies, the said Curtis, as your orator is well advised and insists, forfeited all right in law or equity under the aforesaid agreement.

And your orator further shows unto your honor, that other and further divisions of the aforesaid lots of the said company were afterward from time to time made by them, the said Curtis in each instance sharing in such dividends to the extent of the interest by him claimed under and in virtue of his aforesaid agreement with your orator. Yet the said Curtis has never paid the aforesaid sum of eight hundred dollars, nor any part thereof, to your orator or to any person for his use.

19 And your orator further showeth unto your honor, that at the time
when, according to the terms of the said agreement, the said Curtis ought to have paid to your orator the said sum of eight hundred dollars, the said Territory of Nebraska had been but recently opened for settlement by the government of the United States, and money was in the said Territory in very great demand, and of very great value, and property was proportionably cheap, but was increasing in value with great rapidity, insomuch that the interest contracted to be sold by your orator to the said Curtis for the comparatively insignificant sum of eight hundred dollars, rose during the years eighteen hundred and fifty-four and eighteen hundred and fifty-five to the value of thirty thousand dollars, at which rate like interests in said company were in fact, sold; that by reason of the failure of the said Curtis to pay to your orator the said sum of eight hundred dollars at the time when by the said articles of agreement he was bound to pay

the same, your orator was compelled to sell his remaining interest in the said company, which he did in the spring of the year eighteen hundred and fifty-four, for the sum of fourteen hundred dollars; this sum being much less than your orator could have obtained for the same had he felt assured by past experience that the said Curtis would well and faithfully pay and discharge all and every assessment and charge to which the said remaining shares of your
20 orator might by the said company be subjected, and had, therefore, deemed it safe to covenant with his vendees for the faithful performance, by the said Curtis, of his agreement with your orator to pay and discharge such assessments and charges.

And your orator further showeth unto your honor, that at divers times since the date of the said agreement there has been in the treasury of the said company an accumulation of the earnings of the said ferry, and divisions of the surplus so arising in the language of the said agreement from "the proceeds and operations of the said company," might have been made, but for the original design and supposed interest of the said company not to divide such earnings among the members thereof, but rather to expend the same in such improvements of the said town and for its advancement as tended to increase its value and importance, whereby, and not otherwise, the said members expected to be reimbursed, and the moneys so received into the treasury of the said company have accordingly been so expended.

And your orator further showeth unto your honor, that by falsely representing to the said company that he was the absolute bona fide purchaser, for a valuable consideration paid to your orator, of one-half of your orator's interest in the property of said company, and by fraudulently concealing from the said company the conditions of the said agreement, whereby, on failure of the said Curtis to fulfil the same, "the sale, transfer, or assignment" was to "become of no
21 effect, and inoperative, and all interest thereby intended to be conveyed" should "revert to and become reinvested in" your orator, the said Curtis fraudulently induced the said company to convey to him all the lots hereinbefore in that behalf described. And your orator says that the said Curtis was a man of high pretensions to respectability, superior social position, and wealth, and consequently obtained a high degree of credit for probity and truth, and was thereby enabled to exercise, and did exercise, great influence with the members of the said company, who were thus induced to confide in and yield to his aforesaid false and fraudulent representations; that your orator was a man of comparatively humble pretensions, small property, few friends, and but limited influence, and that although from the time of the failure of the said Curtis to pay the said sum of eight hundred dollars and the assessments and charges upon the shares of your orator, your orator represented to the said company, and to the several members thereof, the facts of the case as hereinbefore stated and set forth, and especially the contents and true purport of the said articles of agreement, and the failure of the said Curtis to fulfil the conditions thereof on his part to be kept and performed, in order to entitle him, as the assignee of your orator, to the one-half of the interest of your orator, which he, your orator, had by the said articles of agreement stipulated to convey to him, the said Curtis, subject
22 to the said conditions; yet the said company saw fit to give credit to the said representations of the said Curtis, and although your orator notified said Curtis unless said contract was performed he would and ever thereafter did insist, as well to said company as to said Curtis, upon being reinstated in the interests so as aforesaid transferred, it wrongfully proceeded to make conveyance to him of the aforesaid lots so set off to him as hereinbefore stated.

And your orator further showeth unto your honor, that the said Curtis has sold a large proportion of the said lots, and that he has received therefor a large sum of money, to wit, the sum of five thousand dollars as your orator is informed and believes, and as your orator believes it would appear if the said Curtis would state and set forth the same.

And your orator further shows unto your honor, that, as he is informed and believes, a portion of the lands of the said company hereinbefore mentioned, on the east side of the Missouri river, has also since the date of the aforesaid articles of agreement been divided among the members of the said company, and the one-eighth part thereof set off to the said Curtis as the owner thereof under and in virtue of the said articles of agreement, in like manner as hereinbefore stated touching the lots on the west side of the said river, and that of the residue of the said lands on the east side of the said river still owned by the said
23 company, the said Curtis claims to be the owner of one-eighth part, under and in virtue of the aforesaid articles of agreement, and he is by the said company and on no other grounds recognized as such owner, fully entitled to all the rights and privileges of a stockholder therein; and that not only as regards the said lands and all the other material property of the said company, but also as regards all the incorporeal rights thereof. And your orator further showeth unto your honor that he has at no time assented to or acquiesced in the aforesaid acts of the said company in derogation of his rights as an original stockholder in the said company, but on the contrary he has, since the failure of the said Curtis to fulfil the conditions of the said articles of agreement, as hereinbefore stated, uniformly asserted and insisted that the said Curtis had forfeited all claims under said articles as the assignee of your orator.

And your orator further showeth unto your honor, that having from time to time sold some of the lots so laid out by the said company in the city of Omaha, and set off to the said Curtis as hereinbefore stated, and having openly and constantly represented himself as the owner thereof, he, the said Curtis, on the seventh day of May, eighteen hundred and fifty-six, filed his petition in the district court of the first judicial district of the said Territory of Nebraska, for
24 Douglas county, praying for a writ of injunction to restrain your orator from conveying or incumbering, or asserting title to the aforesaid lands, set off as hereinbefore stated to the said Curtis, and that upon an ex parte application made in his behalf to the said court upon the said petition, on the eighth day of May last aforesaid, such writ of injunction was granted, and was continued in force until the October term of the said year, eighteen hundred and fifty-eight.

And your orator further showeth unto your honor, that on the first day of April, eighteen hundred and fifty-eight, one Anna Mills, claiming title to lot number eight, in block number one hundred and thirty-five, (the same being one of the lots so as hereinbefore stated wrongfully conveyed by the said company to the said Curtis,) filed her bill in equity in the aforesaid court against one John I. Paynter and others, praying, among other things, to have the aforesaid conveyance of the said company for the said lot set aside, and for a confirmation of her title thereto as the grantee of your orator. And your orator further showeth that the suit so instituted by the said Anna Mills became the subject of general conversation in the said city of Omaha, and it was, as your orator believes generally, if not universally, expected that the claim of title set up by the said Curtis under and in virtue of the aforesaid agreement between your orator and him, would in the said suit be thouroughly canvassed, and its
25 validity or invalidity be definitely determined by a judicial decree in the said court.

And your orator further showeth unto your honor, that being himself fully of this opinion, and not being well able to incur the expense of a suit in chancery, in his own name, for the purpose of establishing his title in the aforesaid lands, he desisted from instituting such suit, until at length he was informed that in July last a decision had been made in the said suit of the said Anna Mills, upon technical grounds, without inquiry into the essential merits of the controversy, or any decision thereupon.

And your orator further showeth unto your honor, that the said Samuel R. Curtis has transferred to Henry Z. Curtis, of the city of Omaha aforesaid, and Samuel S. Curtis, of Kansas Territory, the interests in said company so as aforesaid by him acquired; that the said Henry Z. and Samuel S. were both well advised of all the facts hereinbefore set forth, and paid to said Samuel R. no consideration therefor.

And your orator well hoped, forasmuch as the said Curtis had failed to fulfil the conditions on his part, specified in the said agreement, and forasmuch as he had never paid your orator one dollar for the valuable property claimed by him in virtue alone of the said agreement, that the said Curtis would long since have desisted from asserting any right or title to the aforesaid lands, and left
26 your orator to the unobstructed use and enjoyment of such of the same
as he had not already sold and conveyed to others, thereby unjustly enriching himself at the expense of your orator, as in equity and good conscience he was bound to do.

And now so it is, may it please your honor, the said Curtis, combining and confederating with divers other persons at present unknown to your orator, whose names when discovered your orator prays may be herein inserted, and they made parties hereto with proper and apt words to charge them, and contriving how to injure and oppress your orator in the premises, sometimes pretends that he was under no obligations to pay assessments and charges made by the said company on shares of stock reserved by your orator, when he entered into the aforesaid conditional agreement with the said Samuel R. Curtis for the conveyance to him of the other half of his, your orator's stock, nor even upon the half so as aforesaid conveyed to him, and at other times he did pretend that he did pay and discharge all such assessments and charges, and that he paid, or seasonably offered to pay, your orator the aforesaid sum of eight hundred dollars; whereas your orator charges the contrary thereof to be the truth, and that he, the said Curtis, failed to pay and keep your orator harmless from such
27 assessments and charges, and in particular that he refused to pay the sum
of one hundred and fifty dollars which was assessed by the said company on the shares of your orator, on or about the day of November, eighteen hundred and fifty-three, to defray the expense of constructing a road across a swamp in the said State of Iowa, leading to the said city of Omaha, although your orator requested him to pay the same, and that he, the said Curtis, never made any offer to pay to your orator the said sum of eight hundred dollars or any part thereof until long after, and, according to the best of your orator's recollection and belief, full three years after the first dividend of lots of land hereinbefore mentioned had been made; and sometimes the said Curtis pretends that he has divested himself of all interest and concern as stockholder in the said company, by assigning his certificates of stock therein, or by surrendering the said certificates, and causing other certificates in lieu thereof to be issued to another person; whereas your orator charges the contrary thereof to be the truth, and that if the said Curtis has made any such transfer of his said stock, [illegible] was without consideration, and merely colorable, and designed to hinder and embarrass your orator in the prosecution of his lawful and just rights against him, the said Curtis; all which actings, doings, and pretensions are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

28 In tender consideration whereof, and forasmuch as your orator is remediless in the premises at and by the strict and direct rules of the common law, and cannot have adequate relief save in a court of equity, where matters of this and a like nature are properly cognizable and relievable;

And to the end, therefore, that the said Curtis, and the rest of his confederates

when discovered, may, upon their several and respective corporal oaths, full, true, direct, and perfect annswer make to all and singular the matters and things hereinbefore stated and charged, as fully and particularly as if the same were hereinafter repeated, and they thereto distinctly interrogated, and that, not only as to the best of their respective knowledge and remembrance, but also as to the best of their several and respective information, hearsay, and belief, and especially that the said Curtis and the said company answer, discover, and set forth, whether any of the aforesaid lands originally belonging, or any lands subsequently acquired, by the said company, on the east side of the said river Missouri, have been set off in severalty to the said Curtis, as assignee of your orator, and whether any of the said lands have been sold by the said company; and if they shall answer in the affirmative, that they discover and set forth particu-
larly what, and how much, of the said land has been so set off or sold, and
29 to whom sold, and for what sum or sums; and that the said Curtis answer
and discover whether he has sold any of the said lands so set off; and if he shall answer in the affirmative, that he answer and discover what lands in particular, to whom, and for what price or prices he has sold the same, and whether the consideration has been paid, and whether he holds securities for the same, and what securities, and whether he has transferred his stock in the said company, and if so, to whom and especially whether to his son, Henry Z. Curtis; and if he has made any such transfer, that he answer in what manner the same has been made, and whether upon any and what consideration.

And that the said Curtis and the said company may answer the premises, and that he be decreed to convey to your orator all such lands not already sold and conveyed by him, on the east side of the said river Missouri, if any, as have been set off and conveyed to him in severalty by the said company, and that the said Curtis be decreed to account for and pay over to your orator all sums of money by him received for any lands on the west side of the said river that have been set off to him in severalty and by him sold, and that he assign to your orator any securities he holds for the consideration of the same, and that the said Curtis be decreed to release and quitclaim to your orator all his right and
title derived from the said agreement to all other lands belonging to the
30 said company on the east side of the said river, and to all other property
of the said company, including the incorporeal rights and privileges thereof, and that the said company be decreed to admit your orator as one of the members of the said company and as stockholder therein, of one-eighth part of the stock, rights, and privileges, in lieu of the said Curtis, and that the said Curtis be perpetually enjoined from asserting any title to the last aforesaid lands or to any of the lands, rights, and privileges of the said company, under and in virtue of the said agreement or any part thereof, and from otherwise intermeddling therewith, and for such further and other relief as the circumstances of the case may require, and as to your honor shall seem meet.

May it please your honor to grant unto your orator not only the writ of injunction issuing out of and under the seal of this honorable court to restrain the said Samuel R., Henry Z., and Samuel S., as hereinbefore prayed, but also the writ of subpœna issuing in like manner, to be directed to the said Samuel R. Curtis, Henry Z. Curtis, and Samuel S. Curtis, and the said company, commanding them and each of them by a certain day, and under a certain pain to be therein inserted, to be and appear before your honor in this honorable court,
and then and there to answer the premises, and further to stand to and
31 abide such order and decree therein as shall be agreeable to equity and
good conscience.

And your orator shall ever pray, &c.

WM. D. BROWN.
JAMES M. WOOLWORTH,
Solicitor and of Counsel for Complainant.

TERRITORY OF NEBRASKA,
County of Douglas, ss:

On this 20th day of November, 1860, before me came William D. Brown, whose name is subscribed to the foregoing amended bill of complaint as complainant therein, who, being duly sworn, deposed and said he had read said bill and knew the contents thereof, and the same is true except as to those matters stated therein to be on information and belief, and as to these matters he believes it to be true.

E. B. CHANDLER, *Clerk.*

And thereupon, afterward, to wit, on the twenty-seventh day of February, 1861, was filed in this cause the separate answer of Samuel R. Curtis, and the same was in the words and figures following, to wit:

The separate answer of Samuel R. Curtis, one of the defendants, to the bill of complaint and amended bill of William D. Brown, complainant, exhibited against him and others.

32 This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit or advantage that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as he is by his counsel advised it is material or necessary for him to make answer unto, answering, says:

That he admits that the Council Bluffs and Nebraska Ferry Company is a body politic and corporate, and that it was duly incorporated under the laws of the State of Iowa, and that subsequently they also procured themselves to be incorporated under the laws of the Territory of Nebraska, as stated in said bills of complaint.

This defendant further admits that the said complainant, prior to the said company becoming incorporated, did keep and run a ferry across the Missouri river, but whether he had a license from the proper authorities so to keep and run said ferry, this defendant has no knowlege or information whereon he can safely found a belief, and therefore he can neither admit nor deny that he had such license. But if said complainant did have such right to run and keep a ferry, this defendant admits that the said company did, as stated in said bill, purchase of the said complainant all the right, title, and interest he had therein, and that whatever rights or interests the said Brown had in and to said ferry, the said company succeeded to by virtue of said sale by said Brown to the said company.

33 This defendant, further answering, says that, as he is informed and believes true, the principal object of said company, in acquiring said rights and in becoming incorporated and in keeping and running said ferry, wasnot, as stated in said bill, to facilitate intercourse with the lands now the site of the city of Omaha, but that the principal objects, as this defendant is well advised and believes true, were, as stated in the articles of association of the Council Bluffs & Nebraska Ferry Company, as follows, to wit: "To procure, by building or purchase, suitable boats to keep and maintain the following ferries, viz: One on the Missouri river at a point where the east and west line between sections No. twenty-eight and thirty-three, in township No. 75 north, of range No. 44 of the 5th principal meridian, intersects the east bank of said river. One on the Elkhorn Fork and one on the Loup Fork of the river Platte, in Nebraska Territory; and to carry on such general trade with the Indians and whites along said line as may be found for the interest of the company."

This defendant, further answering, says that, upon his best information and belief, he denies that the said company at its first formation had in
34 view the laying out and building up the present city of Omaha, nor had the members thereof, at the time of the making of said contract between

said complainant and this defendant, any well-defined plan in relation to their future enterprise on the west bank of said river, in said Territory, nor had said company or said Brown at that time, to wit, on the 15th day of August, A. D. 1853, any right, title, or interest on the Nebraska side of said river, in the lands thereof which could be the subject of bargain and sale; nor had said company, at the date last mentioned, any substantial or well-digested plan for securing any claim or interest in the lands now the site of the city of Omaha, nor had the said company then made any appropriations of money to that end, as the Territory of Nebraska had not then been organized, nor had the Indian title thereto then been extinguished, but the entire Territory was then in the possession or owned and controlled by the various Indian tribes then inhabiting the same.

This defendant, further answering, says that he admits that the said company was at the time stated in said bill seized and possessed of other lands lying adjacent to the place selected for their ferry in the said State of Iowa. He also admits that said complainant was one of the original stockholders in said company, as stated in said bill.

35 This defendant, further answering, saith that on or about the 15th day of August, 1853, he and the said complainant did enter into an agreement, a copy of which is inserted in said bill.

This defendant further admits that subsequent to the date of said articles of agreement between complainant and this defendant, the said company did lay out and expend large sums of money in the making of roads and ditches between Council Bluff's and the said ferry on the river Missouri, but this defendant says it is untrue, and he therefore denies, that the said improvements were all or principally designed for the improvement or building up of the city of Omaha, for they were almost wholly built prior to the erection of the first claim cabin upon the site of what is now the city of Omaha, and were made and designed to secure the crossing of the emigration into the aforesaid Territory of Nebraska to Utah, California, and Oregon, and to divert the travel from certain ferries established and managed by certain private persons, both above and below the said company's said ferry, to the ferry of said company opposite the city of Council Bluff's, in the State of Iowa.

And further answering, this defendant saith that, upon his best information and belief it is true, and he admits, that on or about the 6th day of August, 1853, the said company did levy an assessment upon the shares held by the several members of said company, and that at several times afterward other
36 assessments were also levied, but whether the same were in all respects
legally levied, this defendant is not fully advised, and can neither admit nor deny the same. But this defendant, upon his best information and belief, says that it is true, and he therefore insists, that the said assessment of the 6th day of August was levied prior to the date of the agreement between complainant and himself, and was not an assessment which he (this defendant) was in any way bound to pay, nor was it made for any of the objects mentioned in the agreement between this defendant and said Brown.

And for a further answer this defendant saith that it is wholly untrue, and he hereby expressly denies, that he at any time failed to pay and completely discharge to the satisfaction of said company his proper quota of all assessments made upon the shares of said company according to the terms of said agreement; but that he, on the contrary, promptly and to the full satisfaction of the terms of said agreement, and to the satisfaction of said company, faithfully and promptly paid off and discharged all the assessments which by the terms of said agreement he was bound to pay. And he expressly denies that said complainant was ever compelled to pay, or did pay, of any assessment which this defendant, by the terms of said agreement, should discharge, the said
37 sum of one hundred and fifty dollars, or any other sum whatsoever, as

in said bill is charged, or in any other manner whatsoever. This defendant, further answering, says that he admits that the complainant is a resident of the city of Omaha, but, as he is informed and at this time believes to be true, the said complainant did not, soon after the date of said articles of agreement, become a resident of the town site of the city of Omaha, as in said bill it is alleged; but that he did not become such resident until a long time thereafter, to wit, about one year, and in the summer or fall of the year 1854, by which time quite a settlement had been made, and the town surveyed into lots, blocks, streets, and alleys, and a post office established.

And this defendant, further answering, says that, according to his very best information and belief, it is wholly untrue, and he therefore denies, that the said complainant ever became or continued to be a resident of the lands now the site of the city of Omaha, or that he removed to said lands and occupied the same for the sole purpose, by means of his said residence thereon, of entitling the said company to hold the same and to obtain title thereto, as in the said bill charged; but that the said complainant removed to and became a resident of said town site, as before stated, in the summer or fall of the year 1854, for the purpose of setting up an adverse title against the claims of said company to said
38 lands, or rather to a portion thereof, to wit, that portion of said town site situate in the northern part of said city about and in the vicinity of what is known as Bovey and Armstrong's brick-yard, the exact description of which claim this defendant cannot now give. That such settlement by said Brown was in nowise connected with or intended to benefit the said company, but to injure and harass it in securing said claim.

This defendant further admits that he is not, nor has he ever been, a resident of the city of Omaha, nor is he aware that any of the other members of said company have until quite recently, say in the year 1858, become residents of Omaha city; nor was said complainant a resident thereof till long after he ceased to be a member of said company and uninterested in its affairs.

This defendant, further answering, says that he admits that on the 19th day of July, A. D. 1854, the members of the said company made a dividend of the lots as stated in said bill into which the lands of said company had been divided, and that to this defendant were set off one-eighth part thereof, as stated in said bill; but this defendant expressly denies that said lots thus set off to him were at the date last aforesaid of the value of fifty dollars each, but that they had but a merely nominal value, which did not at that time much, if any, exceed the sum of ten dollars each.

39 This defendant, further answering, says that he denies that the said complainant, at the time stated in the said complainant's said bill of complaint, or at any other time, ever demanded from this defendant the said sum of eight hundred dollars, or any part thereof; nor had the said complainant at the time stated in said bill any right to make any demand or request upon this defendant to pay the said sum of eight hundred dollars mentioned in said bill, and also in the agreement between this defendant and the said complainant, because he saith that the same had not then fell due. And this defendant admits that said eight hundred dollars have not been paid.

This defendant, further answering, says that, as he is informed and verily believes, the statement in said bill contained, "that by reason of the failure of said Curtis to pay your orator the said sum of eight hundred dollars at the time when, by the said articles of agreement, he was bound to pay the same, your orator was compelled to sell his remaining interests in said company, which he did in the spring of the year A. D. 1854, for the sum of fourteen hundred dollars," is wholly untrue, except that he did sell his said remaining interest in said company in the spring of 1854, which was several months prior to the time of the said first division of lots, to wit, July 19th, 1854. That all

40 the other allegations respecting said sale to said Tanner and Downs are untrue.

This defendant, further answering, saith that, according to his best information and belief, it is untrue, and he denies, "that at divers times since the date of said agreement there has been in the treasury of said company an accumulation of the earnings of said ferry; and divisions of the surplus so arising, in the language of said agreement, from the proceeds and operations of said company, might have been made but for the original design and supposed interest of the said company not to divide such earnings among the members thereof, but rather to expend the same in such improvements of the said town and for its advancement as tended to increase its value and importance, whereby and not otherwise the said members expected to be reimbursed, and the moneys so received into the treasury have from time to time been so expended," as in said bills the said complainant hath charged.

And for a further answer this defendant says that it is wholly untrue, and he denies, that he ever made any false representations to said company respecting his interest in the same, as in said bill charged. That all the representations which he ever made concerning his purchase from said Brown and his interest in said company were each and every of them true, as the said complainant well knows.

41 This defendant, further answering, saith that he hath no knowledge, information, or belief as to what representations the said complainant made "to the said company and the several members thereof," nor does he know whether complainant informed the said company of the character of the said agreement, or the "purport and contents thereof," as in said bill charged. Nor does this defendant know what importance, if any, the company or the members thereof attached to the pretended representations of the said complainant to said company or its members, if any were by him made, and therefore he can neither admit or deny the several allegations of the bills pertaining thereto, but leaves the said complainant to his proofs thereof.

This defendant, further answering, saith that it is true, and he admits, that he did from time to time sell and convey some of the lots set off to him by the said company, and that he hath realized, as nearly as he can now estimate, about the sum of thousand dollars, but he further saith that during the time he has been a member of said company, he has paid out for assessments for various purposes a very large amount of money, to wit, the sum of at least thousand dollars.

This defendant, further answering, saith that it is true, and he therefore ad-
mits, that a portion of the lands belonging to said company and situate
42 on the east side of said Missouri river, has, since the date of said articles
of agreement, been divided among the several members thereof, as is in
said bill set forth and charged. That the whole quantity thereof thus divided
was one hundred and sixty acres, and is herein after described.

This defendant says it is untrue, and he therefore denies, that he claims any interest in the lands of said company, held by them in common on either side of the river and which are undivided, nor has he any present interest in any other property of said company, nor does he claim any rights or privileges as a stockholder therein, because he saith that on or about the 27th day of July, A. D. 1859, for value received, he sold and conveyed all his right, title and interest in the said company to his son, Henry Z. Curtis, of Omaha city, and who is one of the defendants in this cause, and that from the date last aforesaid this defendant hath not been, nor is he now, the owner of, or in any way pecuniarily interested in the property or rights owned, held, or claimed by the said company in common, nor has he since that time been a member of said company, or enjoyed the rights or privileges of a stockholder therein, but, on the contrary, all such interests have during all that time been held, owned, and enjoyed by the said Henry Z. Curtis and Samuel S. Curtis in equal proportions.

This defendant, further answering, saith that, as he is informed and
43 believes to be true, the said complainant hath at all times since the
making of said agreement, and up to about the time of the commencement of this suit, looked upon and considered this defendant as rightfully a member of said company, and for several years after the said agreement was entered into fully assented to all the acts of this defendant as a member of said company and to all the acts of said company, recognizing this defendant as such rightful member thereof.

This defendant further saith that he admits that the said complainant did, from time to time, (but in fraud of the rights of this defendant,) sell and contract to convey certain of the said lots so as aforesaid set off to this defendant by said company in their said divisions to divers persons, all which wrongful acts and doings this defendant alleges were done for the express purpose of annoying this defendant, and to cheat and defraud him out of his legal and equitable rights in the premises, and with a full knowledge that he, the said complainant, had no moral, legal, or equitable right thus to interfere with the property and interests of this defendant.

This defendant further saith that it is true that he did, on or about the 7th day of May, A. D. 1856, file his petition in said court, praying for a writ of
injunction, as stated in said bill, which said injunction was granted as
44 prayed for, and continued in force, as alleged by the said complainant,
and to which the said complainant quietly assented.

This defendant also admits that one Anna Mills did, at the time and as charged in said bill, claim title to lot No. eight, in block No. one hundred and thirty-five, in Omaha city. But this defendant saith that all the title which she pretended to have was derived from the said complainant alone by virtue of one of the false, fraudulent, and inequitable sales made by the complainant of one of the lots which had been set off to this defendant, and through whom the contestant for said lot, John J. Paynter, claimed and derived his title from the said Council Bluffs and Nebraska Ferry Company. That said Mills did, as stated in said bill, file her complaint against said John J. Paynter and others, praying, as stated in said bill, that she have confirmed unto her the title which she had derived from said Brown, and that the title of said Paynter be decreed of no force or effect whatsoever. That in the final result of said case, it was fully and equitably established by the judgment and decree of said court that the title which said Mills had derived from said Brown was of no force or effect as against the title of said Paynter, derived by him from this defendant. And
this defendant denies that it was expected or believed that any other
45 result could follow from said case than the establishment of the right
of this defendant to all and every of the lots which had thus been set
off to him.

This defendant also admits that his two sons, Henry Z. Curtis and Samuel S. Curtis, are now the owners of all the interest in the aforesaid company which this defendant so as aforesaid transferred to said Henry Z. Curtis. But this defendant says it is untrue, and he therefore denies, that he transferred his interest in the said company and its undivided property without any consideration, but says that he sold and transferred all his interest in said company as aforesaid, and all the rights and privileges he possessed or was entitled to as a member thereof, to the said Henry Z. Curtis, as aforesaid, for a valuable consideration and in good faith. That he received therefor from said Henry Z. the sum of about $4,000 for said interest and rights thus sold, which the said Henry Z. paid by the transfer to this defendant of certain real estate in the State of Iowa, worth at that time at least the sum last above stated. But that the lots which were from time to time divided and set off by said company to this defendant during the time he was a member of said company, except such as he had sold from time to time, are now owned by this defendant conjointly with one Henry B. Curtis, of the county of Knox, in the State of Ohio, 46 but that the legal title thereto at present rests in the said Henry Z. Curtis for convenience merely, and to enable him, the said Henry Z. Curtis, to act with greater authority and facility, as the agent of this defendant and said Henry B. Curtis, in attending to, managing, and controlling the same. And this defendant admits that he did convey to his son, Henry Z. Curtis, (but for the purpose last aforesaid,) the said lots in the said bill charged as having been conveyed to him, the said Henry Z. Curtis.

This defendant, further answering, saith that said Henry B. Curtis is the equitable owner of one undivided one-half of the lots thus conveyed by this defendant to and now held by the said Henry Z. Curtis, in the manner and for the purpose aforesaid.

This defendant further saith that it is wholly untrue, as charged in said bill, that this defendant had failed to fulfil the conditions of said agreement, on his part to be performed, in any one particular, but that, on the contrary thereof, he has at all times faithfully done and performed all and more than all that he was by the exact terms of said contract bound to do, and more than the said complainant could legally have expected from him.

That it is wholly untrue that this defendant never paid nor offered to pay anything for the property which he obtained by virtue of the purchase of said interest in said company from said complainant. That he has not only paid 47 all the assessments made upon the shares which by said contract he had and did stipulate to pay, but did also, on or about the 9th day of April, A. D. 1856, tender and offer to pay to the said complainant the said sum of eight hundred dollars, and even more than that sum, in good and lawful money of the United States of America; that upon said tender being made, he, the said complainant, refused to receive the same or any part thereof. And this defendant saith that although he did as aforesaid make said tender, he did not then, nor does he now, consider that he is in equity and good conscience indebted to the said complainant one single dollar, because he says that about the month of February, A. D. 1856, the said complainant, combining and confederating with divers persons to injure and oppress this defendant, and in the absence of this defendant from said Territory, began fraudulently to sell and dispose of certain of the said lots, which had as aforesaid been set off to this defendant, to divers persons who, through his fraudulent representations were induced to purchase the same; and that the said complainant thus sold of said lots, during the month of March and up to the 9th day of April, in the year last aforesaid, a very large number belonging to this defendant, to wit, twelve lots, and worth at least at that time, in the aggregate, the sum of fifteen hundred dollars, as will more fully and at large appear by reference to the records 48 of deeds of the county aforesaid; that the said complainant continued to make sales of said lots to such persons as he could induce to believe that he was the owner thereof, until about the 3d day of May, A. D. 1856, between which date and the said 9th day of April, aforesaid, he, the said complainant, had sold several other lots belonging to this defendant as aforesaid, fraudulently and with the intent to injure and defraud this defendant out of his own property, to the great wrong and injury of this defendant—in all at least the sum of two thousand dollars, as by the records of deeds in the office of the register of deeds of said county will more fully and at large appear; all of which he, the said complainant, is in equity and good conscience bound to account for to this defendant, and should be offset against any demand which the said complainant may have against this defendant on account of said eight hundred dollars. And should this honorable court determine in this suit that said Brown is entitled to receive the said sum of eight hundred dollars, then, in that case, this defendant asks that enough of the amount of money received by said Brown for the lots of this defendant, so fraudulently sold by him as aforesaid, to liquidate the said eight hundred dollars, be so applied, and that this defendant have a decree for the payment of any balance that may remain thereafter.

49 This defendant further saith that, in order to avoid litigation, and to relieve the said complainant from liabilities to other persons, to whom he had made such fraudulent sales as aforesaid, and at his, the said complainant's, request, but for no other consideration, this defendant did, for merely nominal considerations, release all his interest and title in the lots so fraudulently sold to the respective grantees of the said complainant, to the damage as aforesaid of this defendant in the sum of at least two thousand dollars.

This defendant, further answering, saith that it is wholly untrue that he ever refused or failed to pay and save the said complainant harmless of all assessments and charges which, by said contract with complainant, he, this defendant, was bound to pay; that, on the contrary, he did as aforesaid, at all times, faithfully, and to the perfect satisfaction of said company, pay all valid assessments which from time to time he was called upon by said company to pay, and all assessments which by said contract this defendant undertook to pay.

And this defendant further says that the transfer of his interest as a member of said company to said Henry Z. Curtis was not, as charged in said bill, without any consideration; but that, on the contrary, it was made for a good and valuable consideration, to wit, the sum of about $4,000, paid as aforesaid. Neither was said transfer made for the purpose nor with the intent stated
50 in said bill, but in good faith as an ordinary business transaction.

And for a further answer this defendant saith, in response to the first interrogatory in said bill contained, that a portion of the lands owned and held by the said company, and known and described as the south half of the southeast quarter of section No. twenty-eight, (28,) and the north half of the northeast quarter of section No. thirty three, (33,) all in township No. seventy-five (75) north, of range No. forty-four (44) west, in the county of Pottawattamie, in the State of Iowa. That said lands above described were by said company duly surveyed and platted into lots, blocks, streets, and alleys, and then by said company duly divided among the several members thereof; that to the share then held and owned by this defendant were set off in severalty one-eighth part of the lots into which the said lands were as aforesaid divided. The numbers of said lots, and to whom divided, will more fully and at large appear in the book of said company by reference thereto.

This defendant, further answering, saith he hath sold in all, as he now recollects and believes, of the said lots divided to him on the Iowa side of said river Missouri, not to exceed about eight lots, for about the sum of $25 to $30 each; but even these he did not sell for cash, but took various other kinds of property therefor, which is all he hath sold and conveyed of the lots so as aforesaid
51 set off to him of said lands last above mentioned.

This defendant saith that it is at this time impossible for him to state the precise lots and the blocks in which they lie, which he so, as last aforesaid, sold and conveyed; nor can he state when, to whom, or for what precise sums the same were sold, but that he hath received the consideration therefor.

That in answer to the interrogatory, as to "whether he has transferred his stock in said company," &c., he further saith that he hath duly sold, transferred, and assigned his stock in said company to his son, Henry Z. Curtis, at and for the sum of about $4,000, as aforesaid, which was paid by the said Henry Z. Curtis as follows, to wit: by the transfer to this defendant of about four hundred and eighty acres of land in the western part of the State of Iowa, worth about the sum of four thousand dollars at the time of said sale.

And further answering, this defendant saith, from the date of said agreement with said Brown, to wit, the 15th day of August, 1853, to the time he so as aforesaid sold and conveyed his interest in said company to his son, Henry Z. Curtis, this defendant was by said company recognized as a member thereof, and during the most of that time was tacitly, at least, recognized as a member thereof by said Brown. 52 That at the time of making said contract it was the understanding of this defendant, and, as he verily believes, it was also the understanding of said Brown, that this defendant should at once take possession of said interest thus conveyed, and should at once be in all respects admitted and entitled to all the rights, interests, and privileges of a stockholder owning a one undivided eighth part of all its property, both corporeal and incorporeal, held by it at that time or thereafter acquired, and, on the other hand, liable for all assessments made by said company upon the capital stock pro rata with the other members of said company, according to the interest which he had thus become invested with, and in addition thereto, "to pay," in the language of said agreement, "the proportionate parts quotas of himself and the said party of the first part, (the said complainant,) of the means requisite to the making of roads, grades, and fences, and whatever is deemed necessary by the company (meaning the said Council Bluffs and Nebraska Ferry Company) to secure the claim on the west side of the river."

All which this defendant avers that he hath done promptly, faithfully, and to the entire satisfaction of the said company, and, as this defendant verily 53 believes, to the entire satisfaction of said complainant, until he was induced by the hope of extorting money and property unjustly from this defendant, and encouraged so to do by the enemies of this defendant, he was prevailed upon to commence this suit and falsely to assert that this defendant had failed to fulfil his said contract, and consequently had forfeited all right, title and interest which he had derived under and in virtue of said contract, and all interest in the said company as a stockholder thereof.

And further answering, this defendant says that he is certain that the said Brown did never pay one single dollar of the assessments made by said company, and which this defendant ought to have paid, and he therefore denies every allegation in said bill contained which charges, or tends to charge, that he did at any time so pay or discharge one single dollar thereof.

And this defendant denies all and all manner of unlawful combination and confederacy wherewith he in and by the said bill stands charged, without this, that there is any other matter, cause, or thing in said bill contained material or necessary for this defendant to make answer unto, and herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge and belief of this defendant.

All which matters and things this defendant is ready to aver, maintain, 54 and prove, as this honorable court shall direct, and prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

SAMUEL R. CURTIS,
By GEO. B. LAKE,
A. J. POPPLETON, and
JOHN J. REDICK,
His Solicitors.

THE TERRITORY OF NEBRASKA,
Douglas County, ss:

George B. Lake, being first duly sworn, saith that he is one of the solicitors of the said defendant, Samuel R. Curtis, who is a non-resident of, and now absent from, said Territory; that he, the said affiant, has read the foregoing answer, and of his own knowledge knows all the several matters and things stated in said bill to be true, except as to those matters and things therein stated on information and belief, and as to those several matters and things, he believes it to be true; and further he saith not.

GEO. B. LAKE.

Subscribed in my presence and sworn to before me this 27th day of February, 1861.

E. B. CHANDLER, *Clerk,*
By J. T. ALLAN, *Dep't.*

And thereupon, afterward, to wit, on the 13th day of March, A. D. 1861,
was filed in this cause the joint and several answer of Henry Z. Curtis
55 and Samuel S. Curtis, and the same was in the words and figures following, to wit:

The joint and several answer of Henry Z. Curtis and Samuel S. Curtis, two of the defendants, to the bill of complaint and amended bill exhibited against them and others by the said complainant, William D. Brown.

These defendants, respectively, now and at all times hereafter, saving and reserving all and all manner of benefit or advantage of exception, or otherwise, that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer unto, answering, say:

That they admit that the Council Bluffs and Nebraska Ferry Company exists, and was duly incorporated, as in said bill it is alleged, both under the laws of the State of Iowa and by virtue of an act of legislative assembly of the Territory of Nebraska. They further say that they are not fully advised, and can neither admit nor deny, whether the said complainant procured a license from the proper authorities to keep and run a ferry across the Missouri river, as set forth in said bill; but from information they say that they believe he, the said complainant, did have such license at the time of his said sale to said company.

Further answering, these two defendants say that whatever rights and
56 privileges he, the said complainant, had in connexion with the said ferry,
by the said sale to the said company, he wholly parted with, and from thenceforth to the present time the said company alone hath been and is the rightful owner thereof.

These defendants, further answering, say that, as they are informed and believe true, the principal objects had in view in first becoming incorporated, and in acquiring said right from said Brown by said company, was not as stated in said bill, but that the objects and principal ones of said company were as stated in their articles of association, and which were and are therein stated to be the following, to wit: "To procure, by building or purchase, suitable boats to keep and maintain the following ferries: One on the Missouri river at a point where the east and west line between sections twenty-eight and thirty-three, in township seventy-five north, of range No. forty-four, of the fifth principal meridian, intersects the east bank of said river; one on the Elkhorn Fork, and one on the Loup Fork of the river Platte, in Nebraska Territory; and to carry on such general trade with the Indians and whites along said line as may be found for the interest of the company."

That if any of the individual members of said company, or the company
itself, had the laying out and settlement of the said city of Omaha, it was, as
these defendants believe, an afterthought—a project suggested to and
57 entertained by said company after its first formation.

They also admit that said company did anticipate all others in the occupancy, settlement, and improvement of said town site of Omaha. They say also that said company did not acquire any rights thereto in virtue of said complainant, or any efforts put forth to that end by him; that all the rights they acquired therein were obtained subsequent to the date at which said Brown ceased to be a member thereof.

Further answering, these defendants say that they deny "that at the time of the formation of said company, and ever since, it was understood and agreed by and between the members thereof that the profits which the said company might make by means of said ferry should be applied to the expenses which the said company might incur in building and improving the said town." And they also deny that any of the said profits have been so applied, as in said bill set forth and charged.

And these defendants furthur say that they admit it to be true that the said company were lawfully seized and possessed of other lands adjacent to the place selected for their ferry in the said State of Iowa.

And these defendants further admit that the said complainant was one of the original members and stockholders of the said company, and as such was,
58 at the first formation of said company, the owner of one-fourth part of all its property, rights, interests, and claims then owned by them; that he ceased to be a member thereof about the month of March, A. D. 1854.

These defendants also admit that the said complainant entered into the agreement with the said defendant, Samuel R. Curtis, mentioned in said bill, a copy of which said agreement is attached to and made a part of said bill, which said agreement was duly executed by complainant and said Curtis.

These defendants admit that the said company did, about the time mentioned in said bill, undertake and execute divers works of improvement by making of roads and ditches across the lands then owned by said company; and that they did expend large sums of money in that behalf. But these defendants expressly deny that the said improvements were undertaken for the purpose of promoting any design, at that time formed, of building up the said city of Omaha, because they say that they are well informed and believe it to be true that said improvements were almost, if not quite, wholly completed prior to the extinguishment of the Indian title to the lands on the west side of said river, and prior to the erection of the first claim cabin upon the site of what is now the city of Omaha; and, as they are well informed and believe true, said improvements were made for the purpose of securing the crossing of the emigration into the afore-
59 said Territory of Nebraska, to Utah, Oregon, and California, and to divert the emigration from certain other ferries, managed and controlled by certain private persons both above and below the point on the Missouri river where the said company's ferry was established, to the said ferry of said company opposite the city of Council Bluffs, in the State of Iowa.

These defendants, further answering, say that they admit that on the 6th day of August, 1853, the said company did, as appears from the books of said company, by its directors, levy an assessment upon the several shares of its members to the amount of thirty-three and one-third per cent. of the same; but whether the same was duly and legally levied these defendants neither admit nor deny, but leave the said complainant to establish the same by such proofs as he is by his counsel, learned in the law, advised is necessary. They also say that they deny that said assessment was levied for the purpose stated in said bill, but that they are advised and believe it to be true that said assessment of the 6th of August was levied for the purpose of procuring a steam ferry-boat for the use of said company at their aforesaid ferry. And these defendants also deny that the said defendant, Samuel R. Curtis, was in duty bound to pay the said assessment of the 6th August, or any part of the same. They also say, upon their best information and belief, that he, the said Samuel R. Curtis,
60 was never called upon to pay the same, or any part thereof. They also say that by the terms of said contract with said Brown said Curtis was not legally bound to pay any portion of said assessment.

And these defendants, further answering, say that, according to their best information and belief, it is wholly untrue, and they therefore deny, that said Samuel R. Curtis ever violated or failed to fulfil the said articles of agreement in any particular, but say that he fulfilled each and every condition thereof on his part to be performed to the perfect satisfaction of said company, and to the letter of said contract; that he, the said Samuel R. Curtis, did, from the date of said contract with said Brown, viz., August 15th, 1853, and has, up to the present time, faithfully fulfilled every condition on his part, and has at all times "well and truly conformed to the objects, intents, and interests of the aforesaid company, as regulated and specified in their articles of association aforesaid, and has paid or furnished the proper parts and quotas of himself and the said Brown of the means requisite to the making of roads, grades, and fences, and whatever was deemed necessary by the company to secure the claim on the west side of the river Missouri."

61 And further answering, these defendants say that they are well informed and believe it to be wholly untrue, and they therefore deny, that the said complainant did ever pay or cause to be paid any of the assessments made upon said shares which the said Samuel R. Curtis was by his said contract with said Brown bound to pay; that if said Brown did pay any part or parcel of the one hundred and fifty dollars mentioned in said bill as having been paid by him, the said Brown, the same was paid on an indebtedness of said Brown to said company, individually, and with which the said Samuel R. Curtis had nothing to do, and was in nowise bound to pay or in any way discharge.

And these defendants, further answering, say that they are well informed and believe true, and therefore allege the fact to be, that at a meeting of their directors upon the 6th day of August, A. D. 1853, and prior to the time said complainant and said Curtis entered into their said articles of agreement, an assessment was levied by said company upon the stock of said company to the amount of twenty-six hundred sixty-six dollars and sixty-six cents, and which the said complainant was then legally bound to pay. But these defendants say that the said Brown was not able at that time to pay the said assessment, nor has he since that time, as these defendants believe, been able to pay the same. But that the said company, by an arrangement with said Brown, did assume 62 and pay the amount assessed against the share of said Brown at that time by a contribution had among the other members thereof, the said Brown agreeing to repay the company all such advancements with interest, at a certain rate agreed upon between them, but whether said Brown has ever paid the said company for making such advancement they are not advised.

These defendants, further answering, say that they admit that the said complainant is now a resident of the city of Omaha, but upon information and belief they say that it is untrue, and they therefore deny, that the said complainant soon after the date of said articles of agreement became a resident of the town site of the city of Omaha, or that he removed upon the lands now the site of the city of Omaha for the purpose stated in said bill. But upon information and belief they charge the fact to be, that he did not remove upon said lands till nearly or quite a year had elapsed after the making of said agreement, which was during the fall or summer of the year 1854, at which time quite a settlement had been made, improvements commenced, and the city of Omaha laid out and platted into lots, blocks, streets, and alleys.

63 These defendants, further answering, say that, upon information and belief, they charge the fact to be that even when said complainant did, so as aforesaid, remove upon said town site and become a resident thereof, it was not for the purpose, by means of his residence thereon, of entitling said company to obtain the title thereto under and in virtue of the act of Congress of the United States, as charged in said bill, but for the express purpose of setting up

an adverse claim against said company to said town site, or, at least, a portion thereof, to wit, that portion of said town site situated in the northern part of said city, and in the immediate vicinity of what has heretofore been known as Bovey & Armstrong's brick-yard, the exact description of which is to these defendants unknown; that said settlement was not made for any purpose in the least connected with the wishes or interests of said company, but wholly antagonistic thereto; that the first improvements made upon said town site were made by the said Council Bluffs & Nebraska Ferry Company; that the first improvement made thereon was the erection of the claim cabin known as the St. Nicholas, in or near what is now known as Jackson street; that at the time said agreement was made between said Brown and Samuel R. Curtis all the lands upon the west side of the Missouri river in said Territory were Indian lands, to which the Indian title had not been extinguished; that neither the said Brown
nor the said company had any interest therein at that time, nor till a
64 long time thereafter, and not until the month of May, 1854, or about
that time.

These defendants, further answering, say that said city of Omaha was surveyed and platted into lots, blocks, streets and alleys, in or about the month of June or July, A. D. 1854, and which was long after the said Brown had disposed of his remaining interest in said company, which he did in or about the month of March, A. D. 1854, and had thereby become entirely disconnected therewith, and long before the said complainant had become a resident of said town site; that both the erection of said claim cabin and the surveying and platting of said town site, as well as numerous subsequent improvements, were made and done by the said company through the means and money raised by assessments upon the stock of said company, of which the said Samuel R. Curtis was acknowledged to be a member by the said company, and also by said Brown himself; that said complainant both expressly and tacitly admitted said Samuel R. Curtis to be a member of said company up to about the time of the commencement of this suit, and as such the owner of one-eighth part of the property of said company in common with the other members thereof.

And these defendants further say that they admit that on the 19th day of July, A. D. 1854, the said company made a division of the lots into which
some of the lands of the said company were divided, and that in said
65 division was set off to the said Samuel R. Curtis the said 16 lots, as set forth
in said bill, but these defendants deny that said lots were of the value
in the market of fifty dollars each, but that, on the contrary thereof, at that time they were not worth more on an average than $10 each.

And for a further answer these defendants say that it is untrue, and they therefore deny, that the said complainant, either in person or by any one for him, ever made any request for the said Samuel R. Curtis to pay the said sum of eight hundred dollars, or any part thereof; and these defendants further say, that at the time said demand or request is in said bill alleged to have been made, the said money had not, by the terms and conditions of said agreement between the said Brown and Samuel R. Curtis, become due, nor was said Curtis bound to pay the same, or any part thereof, even had such demand been made at the time and in the manner set forth in said bill; that the terms and conditions upon which said money was to have been paid, as stated in said bill, had not then been fulfilled.

These defendants, further answering, say that they admit that Samuel R. Curtis has not been a resident of the city of Omaha at any time, but has lived at a great distance therefrom ever since its first settlement was made;
that from a time not long after the first of the divisions of said lots until
66 the winter of the years 1855 and 1856, or until the spring of 1856, said
Samuel R. Curtis was engaged for the most part of the time in the eastern cities, to wit, New York, Philadelphia, and Washington; and while he had

been during all that time using all the means in his power honorable and right to promote the interest and increase the value of the said company, he had not during that time been at the city of Omaha, nor, as these defendants are informed and believe true, had he received any deeds to the lots which were thus set off to him after the 19th day of July, 1854.

These defendants further say that, being in the city of Omaha in the spring of the year 1856, he at that time made sale of certain of his lots in the city of Omaha, which had been set off to him by said ferry company; that these sales were the first he had made for cash, and the proceeds of these sales, amounting to the sum of eight hundred dollars and more, he did, immediately thereafter, to wit, on the 9th day of April, 1856, made a tender of the said amount of eight hundred dollars unto the said complainant in good and lawful money of the United States, and even more than that sum by way of compromise, but not because the said Curtis thought the same to be justly and equitably due to him, all which money the said complainant then and there refused to receive.

These defendants also deny that the said complainant was compelled
67 to sell his remaining interest in said company by reason of the non-ful-
filment of the terms of said agreement on the part of said Curtis, because they say that they are well advised, and believe true, the said Curtis did faithfully fulfil all the conditions thereof to the very letter, and as he was in equity and fair dealing bound to do.

And, further answering, these defendants say that, upon information and belief, they declare it to be wholly untrue, and therefore they deny, that the said Samuel R. Curtis ever made any false representations to said company in respect to his interest therein. They also deny that said Samuel R. Curtis fraudulently concealed from said company any of the conditions of said agreement. They also deny that said Samuel R. Curtis fraudulently induced the said company to deed to him said lots, as in said bill is set forth. These defendants further admit that he, the said Samuel R. Curtis, hath sold a number of the lots set off to him by said company; but the exact number of which, or the several sums which the same brought, or the gross sum arising from such sale, these defendants cannot now state, but, as they believe, not to exceed the sum of ———. These defendants, further answering, say that, as they are informed and believe true, the said company have divided a portion of the lands heretofore belonging to said company, and lying upon the east side of the river Missouri; that the
land thus divided consisted of one hundred and sixty acres, described
68 as follows, to wit: "The south half of the southeast one-fourth of section
twenty-eight (28,) and the north half of the northeast quarter of section number thirty-three (33,) all in township number seventy-five (75) north, of range number forty-four (44) west, in the county of Pottawattomie, in the State of Iowa." That of the lots into which the above-described land was platted and surveyed there was set off to the said Samuel R. Curtis one-eighth part thereof in severalty, all of which, as these defendants are informed and believe true, with the exception of some eight lots which said Samuel R. hath sold, he, the said Samuel R. Curtis, now owns jointly with his brother, Henry B. Curtis, of Knox county, in the State of Ohio, and did so own the same at the time of the commencement of this suit.

That of all the lands owned by said company upon the east side of the river, none have, to the knowledge of these defendants, except these above stated, been divided among the several members of said company, but are still held by said company in common.

These defendants, further answering, say, upon information and belief, that he, the said Samuel R. Curtis, hath not since about the 27th day of July, A. D. 1859, owned, possessed, or claimed any pecuniary interest in or to the property,
rights, credits, or franchises of said company, nor hath he since that
69 date been a member of said company, nor hath he since that time been

recognized by said company as a member thereof, because they say that at or about that time, by a sale of all his rights, interests, and claims in and to all and singular the property, corporeal and incorporeal, which was then held by said company in common, which he, the said Samuel R. Curtis, then made to the said Henry Z. Curtis, he, the said Samuel R. Curtis, ceased to be a member thereof, and from thence to the present time the said Henry Z. Curtis hath been a member of said company, and is now a member thereof. That the said Henry Z. Curtis did pay for said interest in said company about the sum of four thousand dollars in real estate, situate, lying, and being in the county of Pottawattomie, in the State of Iowa, consisting of about four hundred and eighty acres. That by an arrangement between the said Samuel S. Curtis and the said Henry Z. Curtis he, the said Samuel S., is the equitable owner of one undivided one-half of the interest so as aforesaid purchased of their father, the said Samuel R. Curtis, although upon the records the title thereto is now in the said Henry Z. Curtis, but in fact the said Henry Z. Curtis is as to one undivided one-half of said interest in said company, and as to one-half of all that
was by said Samuel R. Curtis conveyed to him, the said Henry Z. Curtis,
70 merely the trustee of the said Samuel S. Curtis, for the reason that he,
the said Samuel S. Curtis hath as aforesaid purchased an interest to that
extent therein. All which was well known, as these defendants do believe, by the said complainant. That both the said Henry Z. and Samuel S. Curtis purchased said interest in said property, respectively, in good faith, and for a good and valuable consideration, without any knowledge, information, or belief on their part that the said Brown had any rights or interest therein.

These defendants, further answering, say that according to their very best information and belief, it is wholly untrue, as charged in said bills, and they therefore deny, that the said complainant "never assented to or acquiesced in the aforesaid acts, or any other acts of the said company, in derogation of his rights as an original stockholder in said company."

They also deny that he, the said complainant, did uniformly assert and insist "that the said Curtis had forfeited all claims under said articles as assignee of said complainant. But, on the contrary, these defendants do insist upon it as true that he, the said complainant, did, before and for a very great length of time after the alleged failure to pay the said assessments and the eight hundred
dollars, as stated in said bill, and as late as the month of July, A. D.
71 1859, tacitly and by open declarations and acts, treat and recognize the
said defendant, Samuel R. Curtis, as a member of said company, and
entitled to all and singular the rights and privileges of a stockholder therein.

And these defendants, further answering, say that they, upon information and belief, do admit that the said Brown did, as alleged in said bill, "from time to time (but wrongfully and in fraud of the rights of said Samuel R. Curtis, and for the purpose of annoying, harassing, and injuring him) sell some of the lots" in the city of Omaha theretofore set off to the share of said Curtis in the distribution thereof among the members of said company. That said Curtis did thereupon, as stated in said bill, on or about the 7th day of May, eighteen hundred and fifty-six, file his petition in said court praying for a writ of injunction to restrain said complainant from conveying, incumbering, or asserting title to the lands thus set off to said Curtis, and that the said court, on an application for that purpose made, granted a writ of injunction, which was continued in force and quietly acquiesced in by the said Brown till the October term, A. D. 1858, of said court.

These defendants, further answering, say that they admit that "about the 1st day of April, 1858, one Anna Mills, claiming title to lot No. eight, in block
No. 135, the same being one of the lots divided to said Curtis as a
72 member of said company, filed her bill in equity in the aforesaid court
against one John J. Paynter and others, praying, among other things,

to have the aforesaid conveyance of said company set aside, and for a confirmation of her title thereto as the grantee of said Brown." They also admit that said suit was the subject of general conversation in said city of Omaha, and one in which the people of said city took a deep interest. These defendants also admit that it was generally, if not universally, expected that the title of said Curtis and his claim to the said lots, so as aforesaid set off to him, would be thoroughly canvassed and determined by a judicial decree in said cause. And these defendants say that they are informed, and believe it to be true, that the legality and equity of the title by said Curtis in and to the lots thus set off to him as a member of said company, as well as the illegality and inequity of the pretended claim of the said complainant in and to the same were fairly adjudicated and fully settled. These defendants further say that, as they are informed and believe true, the reason given in said bill why the said Brown hath slept upon his pretended claim so long, to wit, "that he was not able to
incur the expense of a suit in chancery in his own name," is untrue;
73 but as these defendants believe, and charge to be true in point of fact,
the said complainant never until quite lately had any idea that he was entitled to the property in controversy. But that whatever claim he hath from time to time laid to the same was urged by him as a means of forcing said Samuel R. Curtis, as well as these defendants, into compromise, such as the surrendering of lots, as he had before done, or the payment of money, in order to escape vexatious demands, and interminable litigation in vindication of what was and is, by every principle of right and equity, his own.

These defendants further say that they admit that said Samuel R. Curtis has transferred his interest in the said company, its property and franchises, (but not the lots which had been set off to him before such transfer,) to the said Henry Z. Curtis, but not to him jointly with said Samuel S. Curtis; that said Henry Z. Curtis paid therefor a good and valuable consideration, to wit, about the sum of $4,000, and that said Henry Z. has sold an undivided one-half of the same to his brother Samuel S. Curtis, who now owns the same in common with the said Henry Z.

These defendants, further answering, say that they deny that at the time the said Henry Z. Curtis bought said interest in said company from the said
Samuel R. Curtis, he, the said Henry Z., had any knowledge, information
74 or belief that said Brown had any legal or equitable interest therein, nor
do they now believe that he has; that whatever interference he made with the property in controversy they believed, and still believe, was merely as a wrongdoer—as a trespasser. And these defendants now deny that said Samuel R. Curtis is a member of said company, nor hath he been since the 27th day of July, A. D. 1859, at which time he sold all his interest as aforesaid to said Henry Z. Curtis; that the sale to said Henry Z. by said Samuel R. Curtis was made in good faith for a valuable consideration, and was not merely colorable as charged in said bill; nor was said sale to said Henry Z. made "to hinder and embarrass the complainant in the prosecution of his lawful and just rights against him," the said (S. R.) Curtis. They further say that all the several allegations in said bill contained, so far as they tend to impute wrongful, fraudulent or inequitable designs or practices in and about the purchase or holding of said property by them, are altogether untrue, and they deny the same.

These defendants, further answering, admit that the said Samuel R. Curtis did, by deed bearing date about the 21st day of May, 1858, convey to the said Henry Z. Curtis a portion of the lots then belonging to said Samuel R. The
exact number and description of said lots will fully appear by reference
75 to the record of said deed in the Register of Deeds' office in the county
of Douglas. These defendants also admit that no valuable consideration passed from said Henry Z. to said Samuel R. Curtis for said lots thus conveyed, but that said conveyance was made for convenience merely, so that the said

Henry Z. Curtis might act with greater authority as the agent of said Samuel R. in attending to and controlling said property.

These defendants admit that the said Jesse Lowe, mayor of Omaha city, and as such did deed a portion of the lots set off to him by said company to him the said Samuel R. But they say that the said Samuel R. was well entitled thereto, and the said Jesse Lowe had good right and lawful authority to make said conveyance, and was in duty bound to make the same.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are in and by said bill charged, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to aver, maintain and prove, as this honorable court shall direct; and 76 they therefore pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained.

By GEO. B. LAKE,
JOHN J. REDICK and
A. J. POPPLETON,
Their Solicitors.

THE TERRITORY OF NEBRASKA,
Douglas County, ss:

On this 13th day of March, A. D. 1861, before the subscriber personally came Henry Z. Curtis, one of the defendants named in the foregoing answer, and Geo. B. Lake, one of the solicitors for the said Samuel S. Curtis, who, being first duly sworn on their respective oaths, do say that they know the contents of the foregoing answer, and that of their own knowledge they know all the allegations of the foregoing answer to be true, except as to those matters therein stated upon information and belief, and as to those matters they believe it to be true.

HENRY Z. CURTIS.
GEO. B. LAKE.

Sworn before me this 13th day of March, A. D. 1861.

E. B. CHANDLER, *Clerk,*
By J. T. ALLAN, *Dep. Clerk.*

And afterward, to wit, on the 5th day of July, 1861, was filed in this 77 cause the separate answer of the Council Bluffs and Nebraska Ferry Company, and the same was in the words and figures following, to wit:

The separate answer of the Council Bluffs and Nebraska Ferry Company to the amended bill of complaint of William D. Brown, complainant.

This defendant, reserving to itself all right and benefit of exception to said amended bill, for answer thereto says: If this honorable court shall adjudge the said complainant entitled to be reinstated as a member of this defendant, it will submit to such order and decree in the premises as to this honorable court shall seem equitable.

And now, having answered said amended bill, this defendant prays to be dismissed with costs.

THE COUNCIL BLUFFS & NEBRASKA FERRY COMPANY,
By ENOS LOWE, *President.*

And on the fourteenth day of March, A. D. 1861, was filed in this cause the replication of William D. Brown to the separate answer of Samuel R. Curtis, and the same was in the words and figures following, to wit:

In chancery.

78 The replication of William D. Brown, complainant, to the separate answer of Samuel R. Curtis, one of the defendants to the bill of complaint of the above complainant.

This replicant, saving and reserving to himself all and all manner of exception to the manifold insufficiencies of the said answer, for replication thereto says: That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual, in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. M. WOOLWORTH,
Sol. Compl't.

And also, on the said fourteenth day of March, 1861, was filed in this cause the replication of William D. Brown to the joint and several answer of Henry Z. Curtis and Samuel S. Curtis, and the same was in the words and figures following, to wit:

In chancery.

79 The replication of William D. Brown, complainant, to the joint and several answer of Henry Z. Curtis and Samuel S. Curtis, two of the defendants to the bill of complaint of the above complainant.

This repliant, now and at all times hereafter, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says: That he will aver and prove his said bill to be true, certain and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever, in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain and prove, as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. M. WOOLWORTH,
Sol. Compl't.

Depositions.

WILLIAM D. BROWN
vs. } District court, Douglas county. In chancery.
SAMUEL R. CURTIS *et al.*

80 GENTLEMEN: Take notice that Jesse Lowe, of the city of Omaha, in said county, will be examined as a witness for the complainant before James G. Chapman, esq., one of the masters of this court, at his office in said city, at ten o'clock in the forenoon, on the 20th day of March, inst.

Yours, &c.,

J. M. WOOLWORTH,
Sol. for Compl't.

Dated Mch. 14, '61.
To Gov. B. LAKE, Esq., & others,
Def'ts' Sol's.

Let the witness named in above notice be examined at the time and place therein mentioned.

Mch. 14, '61.

JAMES G. CHAPMAN,
Master in Chancery.

Rec'd copy of this notice this 14th day of March, 1861.

GEO. B. LAKE,
Sol. for Def't.

Depositions of witnesses taken in a cause pending in the district court of Douglas county, in chancery, wherein William D. Brown is complainant and Samuel R. Curtis *et al.* are defendants, to be read in evidence on the part of the complainant, in pursuance of a notice and order in that behalf hereto attached.

81 James M. Woolworth, esq., of counsel for complainant, present and conducting the examination-in-chief, and Geo. B. Lake, esq., of counsel for defendants, present and conducting the cross-examination in behalf of defendants.

The examination commenced this 20th day of March, A. D. 1861.

JAMES G. CHAPMAN, *Master.*

Jesse Lowe, being first duly sworn, deposes and says:

Question 1. Where have you resided since June, 1853?

Answer. At Council Bluffs and in Omaha.

Quest. 2. Were you ever connected with the Council Bluffs and Nebraska Ferry Company; and if so, when and in what capacity?

Ans. I was. I was secretary at their organization, and, I think, for about one year subsequent thereto.

Quest. 3. Were you the nominal secretary, or the acting secretary, or both?

Ans. I was both.

Quest. 4. Was Col. Williams at one time the nominal secretary?

Ans. At first, I think, Col. Williams was.

82 Quest. 5. What was the original object of the persons who formed that company in its organization, and why did it assume the character of a ferry company?

Ans. The original object, as I understood it, was to make a large claim of land and build a town upon it, where Omaha now stands. I don't know why it was called a ferry company, unless it was simply to give it a name.

Question. What, if any, intercourse did it have with the Indians who were, at the time of its formation, in possession of the lands now the site of the city of Omaha? When, how, and by what means was such intercourse, if any there was, authorized, commenced, and continued?

Ans. The company had permission from the Indian agent, Major Gatewood, through me, to trade with the Omaha Indians from the summer of 1853; and besides, the president of the company paid the Indians tribute for the privilege of living here on these lands, and occupying them as a company. I think this intercourse continued about two years from its commencement.

Quest. Was any trade carried on with the Indians?

Ans. There was not.

83 Quest. What was the custom of the company as to notifying stockholders of assessments made upon the stock; by whom was the notice, if any, given, and what degree of punctuality was used by it, or its officers, in so notifying the stockholders.

(All of the questions objected to except that part which asks the witness "By whom was the notice, if any, was given," as irrelevant.)

Ans. For the first two years the notices were always given by the president of the company to the stockholders. I think the notices were always promptly given.

Question. Can you state whether any notice was given to any particular stockholder of any particular assessment?

Answer. I don't remember of any now in particular.

Question. State whether or not the business of ferrying was at the formation of the company, or at any time while you were acting as secretary, contemplated as a principal object of the company, or was auxiliary to some; and if so, what other object?

Answer. It was only considered as a means to be used in helping to build up a town, at that time looked upon as having only a nominal value.

Question. What was the expectation of the members of the company as to the organization of the Territory, and what steps were by them, and by others residing in the vicinity, taken to secure such organization?

(Objected to as irrelevant and immaterial.)

Answer. It is a difficult question for me to answer. All the steps taken, I know of, was to elect Hadley D. Johnson delegate, and the people above
84 and below here, and from the other side of the river, met at the old limekiln near Bellevue, on the river bank, to elect him. I don't remember what the members of the company expected as to the organization of the Territory.

Question. At the organization of the company had the emigration to California through here continued to be, or had it ceased to be, considerable?

Answer. It continued to be large at that time.

Question. When did the company first take steps, and what were the same, toward securing the claim of the land on which Omaha is now built?

Answer. The first thing that was done was to make out the claim; in July, 1853, I think.

Question. When was the building known as the St. Nicholas built, and for what purpose?

Answer. It was built as a claim-house, on the town site, in the summer of 1854.

Quest. When was the town surveyed into lots and blocks?

Ans. In the summer of 1854.

Quest. Who did the surveying?

Ans. A. D. Jones.

Quest. Do you know of the construction of any road by the company in Iowa; if so, when was it built, what was the character of the work, and when was the same done?

85 Ans. I know of a road called "The Grade," on the Iowa side of the river, opposite Omaha, built by the ferry company in the winter of '53-'4.

Quest. By whom was the work performed?

Ans. It was superintended by Wm. D. Brown, under a contract sub-let to him by Col. Curtis.

Question. Are you acquainted with the value of the lots divided by the company, among its several members, at the first division of lots made by it 19th July, 1854?

Ans. I am.

Question. What was the average value of the same at that time?

(Objected to as irrelevant and immaterial by counsel for def't.)

Ans. They were worth, I suppose, fifty dollars each.

Question. Did Brown ever, to your knowledge, demand of the company to reinstate him in the shares sold by him to Curtis; and if so, when?

(Objected to as immaterial.)

Answer. I have heard Brown say to some members of the company that

Curtis had forfeited his contract with him, and that he had a right to have his interest in, and be a member of the company as formerly, from '54 up to the time the deeds were made to him.

(Answer objected to by def'ts' counsel, for the reason that the same is hearsay testimony, and irrelevant.)

Question. Do you know whether or not Brown made the like demands upon S. R. Curtis; if so, when?

86 Answer. I don't remember any time when Brown made a formal demand of the like to Curtis.

Question. Do you know of Brown talking to Curtis upon the subject?

Ans. I do not now remember.

Cross-examination by Geo. B. Lake, esq., counsel for def'ts.

Question. Can you give the numbers of the lots and blocks referred to in your direct examination as being divided among the members of the company, and which you say were worth at that time $50 each? If so, please state them.

Answer. I cannot.

Question. Do you know the numbers of the lots which were divided to Samuel R. Curtis, one of the defendants?

Answer. I know some of them.

Question. Do you mean to be understood as conveying the idea that all the lots divided to Samuel R. Curtis, at the first division, were worth $50 each in cash?

Answer. I mean to say that the best lots on the town plat were worth $50.

Question. At what time was the first division of lots made?

Answer. I could not tell without the journal.

87 Question. What would the lots, divided to Samuel R. Curtis in this first division, have sold for in July, 1854, for cash?

Answer. Well, if they were some of the best lots they would have been worth fifty dollars cash, and the first division, I think, were of the best lots, and if sold at all, I think they would have brought fifty dollars.

Question. Do you know of any lots being sold for the sum of fifty dollars in cash in July or August, 1854; if so, state what lots, by whom, and to whom sold?

Answer. All that I know, particularly about the price of lots at that time, was block 136, upon which I, in connexion with S. S. Bayliss, erected a building, at a cost of seven thousand dollars in consideration of receiving the entire block therefor, which is the only standard I have to judge by, not knowing of any sales at all at that time for cash. Everybody settling here at that time received a lot as a bounty for building and living thereon from the company.

Question. I suppose you desire to be understood by the foregoing answer that you and S. S. Bayliss were to have both the building and the block on which the same was erected, in consideration of building the same?

Answer. I do, and thereby enhancing the value of other lots in the town a great deal more than that amount, as it was the pioneer brick house in the town at that time.

Question. Can you state what month of the year 1854 the building known as the "St. Nicholas" was erected; if so, state?

88 Answer. I do not.

Question. Please state, if you know, what the first work was that was performed by the company towards making the claim now the site of the city of Omaha, and when the same was done; state the month and year, if you can.

Answer. I can only state the year. The claim was marked around in the summer of 1853. In the summer of 1854 the claim house was built on the town site, and the town was surveyed into lots and blocks.

Question. About how many acres was enclosed in the original claim first made by the company?

(Objected to as irrelevant and not proper cross-examination.)

Answer. About two thousand acres.

Question. What proportion of this original claim did the company finally secure to itself?

(Objected to as irrelevant and not proper cross-examination.)

Answer. I believe they finally secured between six and seven hundred acres.

Question. For how long a time had emigrants to California and Utah crossed the Missouri river opposite the present city of Omaha prior to the time of the making of this original claim?

Answer. I know only from information, except the summer of 1853.
89 They were crossing here at this point when I came to Council Bluffs.

Question. State, if you know, for what purpose the ferry between this place, now Omaha, and Council Bluffs was originally established.

Answer. I don't know, for I was not here, and never knew who it was first established it.

Question. Do you, of your own knowledge, know that notice of assessment made on the capital stock of the company was given to any one of the stockholders?

Answer. All that I know is from frequent conversations with the president of the company.

Question. Will you state whether any member of the company lived upon the lands now the site of the city of Omaha prior to the extinguishment of the Indian title thereto; and if so, which of them?

Answer. Captain Downs lived here previous to that time.

Question. Was he at the time he so lived here, and prior to the extinguishment of the Indian title, a member of said company?

Answer. On reflection, I am not certain whether he lived on the claim previous to the extinguishment of the Indian title or not, but I think he did not, but was here shortly afterward.

Question. Did the articles of association between the members of said company contain a statement of the objects for which said company was formed, and were those articles of association in writing?

Answer. They were in writing, but I don't now remember what they contained.

90 (Here counsel for defendants objects to the 5th question of the direct examination, for the reason that the articles of association which appear to have been in writing are the best evidence of what the objects of said company were.)

Re-examined by counsel for complainant.

Question. You say that the brick building on block 136 was the "pioneer brick building;" was there not some other brick building erected at or about the same time? If so, by whom, and for what purpose?

Answer. The old capitol building went up simultaneous with the building before referred to, and built by the town company.

Question. Do you know Henry Z. Curtis; and if so, when and where did you first become acquainted with him?

Answer. I think the first time I ever saw Henry Curtis was in 1857, in this place.

Question. Do you know whether or not he was at that time, or at any time since then, aware of the controversy between his father and Brown; if you answer in the affirmative, state what leads you to that conclusion?

Answer. He must have been aware of the unsettled condition of his father's property here in Omaha, for the reason that he has talked to me about the same. I think in 1857.

(Answer objected to as being irrelevant.)

91 Hereupon this examination was adjourned until to-morrow morning. March 20, 1861.

JAMES C. CHAPMAN,
Master in Chancery.

THURSDAY MORNING, *March* 21st.

The further examination of witnesses in this cause was, by consent of parties, continued until

APRIL 23d, 1861.

The examination of witness Jesse Lowe resumed.

Question by Mr. Woolworth, counsel for complainant. Look at the book now shown to you, marked in gilt on the back "L" and state what the same is, and whether the entries therein were any of them made by you, and whether you have been acquainted with the same ever since such entries were made, and whether such entries were made therein on or about the time they respectively bear date?

Answer. I have looked at the book; it is the first book ever used by the ferry company containing the proceedings of the same. Some of the entries were made by me as secretary. I have been acquainted with the book and the entries ever since the same were made. They were made at the time they respectively bear date.

Question. Look at the record in that book at the meeting of the ferry company of the 7th of February, 1854, in whose handwriting is that entry made, and what house in the resolution therein entered calling for an instalment on the capital stock, is therein referred to?

92 Answer. The entry is in my handwriting. The house referred to in that resolution is the old claim house, called the "St. Nicholas."

Question. Look at the resolution at the meeting of the 5th of April, 1854. What was the object of the assessment made at that meeting, and to what purpose were the funds so raised applied?

Answer. The principal objects were, to build the claim house on the town site, and to erect the old capitol building, and for surveying the town site, and the funds were so applied to that purpose.

Question. Look at the record of the meeting of the company on the 19th day of July, 1854, in whose handwriting is the record of that meeting down as far as the division of lots, and what are the improvements referred to in the resolution calling for a dividend?

Answer. In the handwriting of S. R. Curtis. The improvements referred to was for the grade on the other side of the river.

Question. In answer to the 10th interrogatory upon your former examination, do you mean to say the town or the ferry was looked upon as having only a nominal value?

Answer. The ferry was looked upon at that time as only a bill of expense to the company, and would be so for years to come. The money was expected to be made out of the town.

93 Question. Look again at the record of the meeting of the company on the 19th of July, 1854, and state the value at that time divided to Curtis, both on that date and also in the division made in the month of September of that year?

Answer. The lots divided to Curtis in July were worth, on an average, fifty dollars apiece at that date, and the lots were worth in September about the same amount apiece.

Question. Do you know of a sale of a number of lots made by Dr. Lowe to A. J. Hanscom in 1854; if so, when, how many lots were sold, and at what price, and how was the payment made?

(Question objected to for irrelevancy by defendant.)

Answer. I don't remember how many he did sell, but what he sold he got a hundred dollars apiece. It was some time during the summer of that year. The consideration paid was a house and lot in Council Bluffs. In those times property was considered a great deal better than money, for the reason that everybody was investing in real estate.

(Objected to for irrelevancy.)

Question. Were you acquainted with the house and lot in Council Bluffs; if so, what was the fair cash value of the same at that time?

(Objected to for immateriality.)

Answer. I would say, any how, two thousand dollars.

(Objected to for same reason.)

Question. Look at the record of the meeting of the 4th of October, 1854, and state what are the improvements therein referred to?

94 Answer. The improvements were the building the claim house, surveying the town site, and building the old capitol.

Cross-examined by Mr. Lake.

Question. Was the company in the habit of making assessments on the capital stock of said company in Iowa to make improvements on the Nebraska side of the river?

Answer. I think they did both.

Question. What was the object of the company dividing the capital stock into two parts, called the stock upon the east side of the river, and the stock in Nebraska?

Answer. I don't know.

Question. Was it not the understanding among the members of the company that in making improvements on either side of the river that assessments should be made upon that capital stock of the company being where the improvements were made?

Answer. I don't think there was any attention paid to that generally.

Question. Did you not understand at the time of the formation of said company or afterward that such was the design of the company in dividing their stock?

Answer. No.

95 Question. On this order of the company made July 19, 1854, are used the words "50 per cent. of the capital stock designated for improvement on the Nebraska side," to what portion of the capital stock of the company did you understand that as referring?

Answer. It says on the Nebraska side, but I think they meant the entire stock, and raised the same off the entire stock, I think.

JESSE LOWE.

James M. Woolworth, a witness produced, sworn and examined in behalf of complainant.

Question. Did you ever have any conversation with Henry Z. Curtis relative to the controversy between his father and Brown, about the property contracted to be sold by Brown to Curtis in the articles of agreement set forth in the pleadings in this cause; if so, what were the same, and when and where were they had?

(Objected to by counsel for Samuel R. Curtis and Samuel S. Curtis, on the ground that they are not bound by the declarations of Henry Z. Curtis.)

Answer. In 1858 and 1859 I had frequent conversations with Henry Z. Curtis relative to that controversy; I was at that time defending the claim of John J. Paynter to a lot sold him by Curtis against Anna Mills, who derived 96 title from Brown. The conversations usually arose in respect to that litigation, but I frequently discussed with him the construction of the above-named articles of agreement; all their features were frequently considered by us, in our conversations; those of these conversations had in 1859 were in the fore part of that year.

JAMES M. WOOLWORTH.

THE TERRITORY OF NEBRASKA,
Douglas County, ss:

I, James G. Chapman, a master in chancery within and for the county of Douglas and Territory aforesaid, do hereby certify that the above-named witnesses, Jesse Lowe and James M. Woolworth, were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and to true answers make to the questions propounded to them in the foregoing case, without favor or affection to either party; and that the foregoing depositions by them respectively subscribed were reduced to writing by me, and that the same were respectively by said witnesses subscribed in my presence, and that the same were taken at the time and place mentioned in the notice hereto attached; the deposition of witness James M. Woolworth being taken by consent of the parties.

Witness my hand this 23d day of April, A. D. 1861.

JAMES G. CHAPMAN,
Master in Chancery, Douglas county, N. T.

97 *Articles of association of the Council Bluffs and Nebraska Ferry Company.*

Art. 1. The following persons, viz: Enos Lowe, Jesse Williams, James A. Jackson, Samuel M. Ballard, William B. Street, Samuel S. Bayliss, William D. Brown, and Joseph H. D. Street, do hereby associate themselves together, under the provisions of the general incorporation law of the State of Iowa, entitled "Corporations for pecuniary profit," code of Iowa, chapter 43, title 10, under the name and style of the Council Bluff and Nebraska Ferry Company.

Art. 2. The company shall have a common seal.

Art. 3. The company shall exist in its corporate capacity for the term of twenty years from the date of the signing these articles of association.

Art. 4. The objects and general business of the company to procure by building or purchase suitable boats to keep and maintain the following ferries, viz: One on the Missouri river at a point where the east and west line between sections No. 28 and 33, in township No. 75 north, of range 44, of the fifth principal meridian, intersects the east bank of said river; one on the Elkhorn Fork, and one on the Loup Fork of the river Platte, in Nebraska Territory, and to carry on such general trade with the Indians and whites along said line as 98 may be found for the interest of the company.

Art. 5. The capital stock of the company shall be eleven thousand dollars, divided into shares as follows, viz: The stock in the ferry on the east side of the Missouri river shall be eight thousand dollars, divided into shares of five hundred doll's each, and the stock in Nebraska shall be three thousand dollars, divided into shares of two hundred and fifty dollars each, which shall be negotiable, and transferable under such rules and regulations as a majority of the company may direct.

Art. 6. The officers of the company shall consist of a president, secretary, treasurer, and three directors, who shall be stockholders, and be elected by ballot on the twenty-third day of July, 1853, and annually thereafter on the first Monday in each year, who shall hold their offices for one year, and until their successors are duly elected and qualified.

Art. 7. The president shall preside at the stated meetings of the company and of the board of directors, and exercise general supervision over the affairs of the company.

Art. 8. The secretary shall keep a faithful record of the doings of the company, as well as of the board of directors, in books to be kept for that purpose.

Art. 9. The board of directors shall consist of the president, secretary, and
three directors. The president and secretary, with any one of the
99 directors, shall constitute a quorum for the transaction of business, and
shall meet for the transaction of business at such time and places as the president shall direct, and said board shall have the control and management of all the affairs of the company, call for such instalments as the interest of the company may direct, and make all appropriations from the treasury.

Art. 10. The treasurer shall receive and keep all moneys, &c., belonging to the company, pay out the same upon orders drawn by the president and countersigned by the secretary, by order of the board of directors; keep a true account of the fiscal affairs of the company; a true account between the members of the company and the company, and report the condition of the treasury to the board of directors at least once every three months, and at the annual meetings of the company to elect officers.

Art. 11. The indebtedness of the company shall at no time exceed the sum of seven thousand dollars.

(Signed)

ENOS LOWE.
JAMES A. JACKSON.
WILLIAM B. STREET.
J. H. D. STREET.
WM. D. BROWN.
JESSE WILLIAMS.
SAM'L S. BAYLISS.
S. M. BALLARD.

100 Proceedings of a meeting of the stockholders of the Council Bluffs and Nebraska Ferry Company, held at the office of Dr. Lowe, in Council Bluffs, on the 23d day of July, 1853.

On motion, James A. Jackson, esq., was called to the chair, and Jesse Williams appointed secretary.

On motion, the stockholders in the company proceeded to elect their officers for the ensuing year, as provided in the 6th article of the articles of association by ballot.

The ballot being counted, the following gentlemen were duly elected officers, as follows, to wit:

Enos Lowe, president; Jesse Williams, secretary; James A. Jackson, treasurer; Sam'l S. Bayliss, William D. Brown, Jos. H. D. Street, directors.

On motion, the by-laws of the company were adopted, and ordered to be signed by each member of the company.

On motion, the meeting adjourned.

JESSE WILLIAMS, *Sec.*

101 *By laws of the Council Bluffs and Nebraska Ferry Company.*

Art. 1. The first election of officers and directors provided for in the articles of association of the "Council Bluffs and Nebraska Ferry Company" shall be elected on the first Monday of each year.

Art. 2. Each stockholder shall be entitled to one vote for each share of one-sixteenth ($\frac{1}{16}$) of the capital stock of the company.

Art. 3. Authority in writing from a stockholder shall be necessary to entitle him to vote by proxy.

Art. 4. A majority of two-thirds of all the votes in the company shall be necessary to a choice of officers and directors.

Art. 5. A vote of a majority of the board of directors shall be necessary to be had and recorded in their minutes before any share or shares of the capital stock of this company shall be transferred.

Art. 6. The duties of the treasurer of the company shall be to receive all funds belonging to the company, and pay out upon the order of the board on the draft of the president, countersigned by the secretary.

Art. 7. The treasurer shall be required to give bonds to the company for the faithful discharge of his duties of the same of ten thousand dollars, and the board shall require such additional security from the treasurer as, in their judgment, the interest of the company may require.

102 Art. 8. The secretary shall give notice in writing to the stockholders or their proxies of all orders of the board which may be made requiring the payment of stock; and if, after receiving such notice, they shall neglect, or in anywise fail to pay such instalment or instalments of the capital stock as shall be called for, for one month after receiving such notice, such stock, together with all moneys that may have been paid on the same, shall forfeit to the company.

Art. 9. In the absence of the president, the board shall select a president *pro tem.* to act during such absence.

AUGUST 6, 1853.

At a meeting of the board of directors of the Council Bluffs and Nebraska Ferry Company, held at the office of Dr. Lowe, it was ordered—

That a dividend upon the capital stock of this company be called in and collected of thirty-three and one-third per cent. upon the capital stock, and that the secretary give the requisite notice to the stockholders.

Resolved, That Messrs. Jackson and Bayliss be appointed a committee to receive proposals for building the necessary bridge, embankments, &c., on the road leading to the river at our ferry landing.

Resolved, That the president draw from the treasurer the funds in his hands, and that he be authorized to purchase or contract for the building
103 or either, at St. Louis, or any other point that he may think best, for a
good steam ferry-boat for the use and benefit of the company, and that he be authorized to enter into such contracts as he may, in his judgment, think to be the best interest of the company for a boat, either to be built, or for the purchase of one already built.

August 6th, 1853.

Resolved, That a dividend upon the capital stock of the company of ($\frac{1}{4}$) one-fourth be called in for the purpose of making a payment on the ferry-boat, and the expense of bringing her up the river.

Oct. 12, 1853.

Resolved, That a dividend of twenty per cent. upon the capital stock of the company be called in to make a payment for the ferry-boat.

Dec. 24, 1853.

Resolved, That Messrs. Jackson, Bayliss, and Street be appointed a committee to determine and report when the contract of Col. Curtis is completed, and to examine and estimate certain work done by Wm. D. Brown on the road, and to give said Brown a certificate of the estimated value of his work, which shall be paid out of any money in the treasury not otherwise appropriated.

104 *Reso'ved,* That Mr. Jackson may contract for the cutting and banking
of three hundred cords of wood for the ferry.

December 31, 1853.

A. D. 1854.

Resolved, That the stockholders of the company proceed to elect officers, as required in the 6th article of association, by ballot, which being done, the following were duly made officers of the co. to serve one year:

Enos Lowe, president; Jos. H. D. Street, secretary; Jas. A. Jackson, treasurer; Sam. S. Bayliss, Wm. D. Brown, Jas. A. Jackson, directors.

January 2d, 1854.

Resolved, That notice be given to Samuel R. Curtis or his agent that further delay in the performance of his contract for grading the road cannot be allowed, and that, unless said contract be completed by the 1st day of February next, it will be treated as forfeited.

Resolved, That notice be given to James C. Mitchell to desist from
105 building or doing any other work on the land belonging to the company.

January 11, 1854.

Resolved, That the sum of $620 22 be paid to Curtis & and Brown on their contract for embanking, and that a draft be drawn on the treasurer for the same.

Resolved, That the sum of $155 be paid to B. Minton on his contract for embanking; the sum of $47 to Tootle & Jackson for services as per bill rendered; to Allen $14 for boarding hands, and $1 25 to Clark for chopping wood, and that drafts be drawn on the treasurer for the same.

January 21, 1854.

At a meeting of the directors on the 7th of February, 1854—

Resolved, That for the purpose of constructing three hand ferry-boats, two for the Elkhorn river, and one for the Loup Fork river, for building a trading-house and ferry-house and stable, and to make enclosures for stock, and to bridge the Papeo, an instalment of 33⅓ per cent. of the capital stock of the company in Nebraska be collected.

Resolved, That A. D. Jones, with a sufficient force, be employed to make
106 a survey and location of a road from the ferry to the Elkhorn river.

Resolved, That the secretary make a deed to James C. Mitchell for one-half acre of ground, including the house built by him, and said half acre shall not approach nearer the river than the west side of said house, nor nearer the graded road than the north side of said house, being nearer the Lone Tree ferry.

April 5th, 1854.

At a meeting of the directors of the Council Bluffs and Nebraska Ferry Company, held at the counting room of J. A. Jackson, it was

Resolved, That the account of Tootle & Jackson, dated from the 2d January to the 29th March, 1854, amounting to $639 be allowed, and that the president issue a draft therefor.

Resolved, That the call ordered on the 7th of February, 1854, for 33⅓ per cent. of the capital stock of the company in Nebraska is suspended.

Resolved, That in lieu of the call for 33⅓ per cent. of the capital stock in Nebraska, which has been suspended in the foregoing resolution, there be collected 21 and ½ per cent. of the capital stock in Iowa.

107 At a meeting of the directors of the Council Bluffs and Nebraska ferry
on the 13th July, 1854,

Resolved, That the account of A. Davis, for framing three boats, dated March 25, 1854, amounting to one hundred dollars, ($100,) be allowed.

Also, the acc't of J. V. Jeffries & Co., for lumber, from March 29th to May 18th, amounting to three hundred and twenty-nine $\frac{81}{100}$, be allowed.

Also, the acc't of Tootle & Jackson, from 7th day April to July 15th, amounting to seven hundred and twenty $\frac{11}{100}$ dollars \$720$\frac{11}{100}$ be allowed, and that the president issue orders therefor.

July 19th, 1854.—A special meeting of the Ferry Company was called, at which the following directors and stockholders were present:

E. Lowe, director and president; J. A. Jackson, director and treasurer; W. D. Brown, director. Also, S. M. Ballard, and S. S. Bayliss, stockholders, were present.

On motion, ordered, that Saml. R. Curtis be paid eleven hundred dollars, the amount due on his contract for making embankment, less what has already been paid.

On motion, ordered, that W. D. Brown be allowed \$1 55 per foot for
108 147 feet lineal of embankment which he constructed, and \$1 00 per foot
lineal for 339 feet of embankment which he constructed at the river end
thereof, making total of \$566 85. Also, allowed bill for work, wood and other items, \$104 20, as per bill rendered, and the treasurer is directed to pay the same.

On motion, lot 1 in block 103, and No. 2 in block 115, for services in keeping the books of the company, be allowed to C. W. Boyers, and the president execute a quit-claim deed to the said Boyers for said lots.

On motion, ordered and agreed, that portion be made of lots in the following blocks in Omaha City to the several owners by lot, viz: blocks 169, 167, 165,
152, 150, 148, 139, 137, 135, 123, 121, 119, 106, 104, 102, 108.
109 Ordered, that a dividend of 50 per cent. of the capital stock designated
for improvements on the Nebraska side be called from the stockholders.

Division of lots ordered on foregoing page.

	BLOCKS.							
	169.	167.	165.	152.	150.	148.	139.	137.
S. R. Curtis	4	5	7	3	6	6	6	5
Sam. S. Bayliss	3	1	3	4	1	2	1	4
S. M. Ballard	1	4	1	5	7	4	8	1
Dr. E. Love	2	7	4	6	4	1	7	6
James A. Jackson	5	3	2	8	5	7	3	8
—— Street	7	2	5	1	2	8	4	7
—— Downs	6	8	8	2	8	5	5	2
—— Williams	8	6	6	7	3	2	2	3

	BLOCKS.							
	135.	123.	121.	119.	106.	104.	102.	108.
S. R. Curtis	8	5	1	1	8	2	6	7
Sam. S. Bayliss	5	1	3	7	5	1	3	3
S. M. Ballard	4	7	6	8	3	6	7	2
Dr. E. Lowe	2	6	5	5	4	3	8	8
James A. Jackson	6	2	2	4	6	8	1	6
—— Street	7	3	4	3	1	7	4	1
—— Downs	3	4	7	2	7	5	5	4
—— Williams	1	8	8	6	2	4	2	5

Ordered, that the president make a quit-claim deed to each stockholder for the lots opposite their respective names in the foregoing statement.

110 At a meeting of the directors July 21st, 1854, it was

Ordered, that the account of Thomas Davis, from July 21st to May 2d, 1854, amounting to the sum of forty-eight $\frac{20}{100}$ dollars, ($48 20) be allowed, and that the president issue an order therefor.

Council Bluffs City, Oct. 4th, 1854.—Ordered, that a dividend of fifty per cent. (being the remainder) of the capital stock designated for improvements on the Nebraska side be called in from the stockholders.

At a meeting of the Council Bluffs and Nebraska Ferry Company, present: Jas. A. Jackson, Sam'l S. Bayliss, Wm. Tanner, and Jas. Redfield, on the 10th of March, 1855.

It was ordered, that Jas. Redfield be appointed president *pro. tem.* On motion,

Resolved, That in order to secure the location of the capitol on the capitol square, as in lithograph plat of Omaha City, and believing that said location will fully indemnify the stockholders of the Council Bluff and Nebraska Ferry Co. in donating to Jas. C. Mitchell a portion of the lots belonging to said company in consideration of said location, it is therefore ordered, that the
111 Council Bluff and Nebraska Ferry Co. quit-claim to Jas. C. Mitchell the
following lots situated in Omaha City, N. T., and designated on the lithographed plat of said city, as follows: lots eight (8) and five, (5,) in block ninety-two (92;) lots four (4) and eight, (8,) in block eighty-four, (84;) lots four (4) and eight, (8,) in block eighty-six, (86;) lots one, (1,) five, (5,) four (4) and eight, (8,) in block ninety, (90;) lots five (5) and six, (6,) in block one hundred and fifty-three, (153;) lots one (1) and eight, (8,) in block one hundred and sixteen, (116;) lots one, (1,) five, (5,) six, (6,) seven (7) and eight, (8,) in block one hundred and forty-one, (141;) lot one, (1,) in block one hundred and fifteen, (115;) lots three, (3,) six (6) and seven, (7,) in block one hundred and fourteen, (114;) lots three (3) and seven, (7,) in block one hundred and forty-two, (142;) lots two, (2,) seven, (7,) three (3) and four, (4,) in block one hundred and forty-five, (145;) lots two, (2,) three (3) and seven, (7,) in block one hundred and seventy, (170;) and the following described lots situated between said city and the Jeffries addition—being on the Council Bluff and Nebraska Ferry Co.'s addition to Omaha City—block five, seven, and nine, containing twenty-four lots.

Also, the one undivided twenty-fourth part of the following lots of ground situated in Omaha City, and designated on lithographed plat of said
112 city as blocks Nos. 67, 68, 69, 94, 95, 96, 97, 98, 99, 125, 126, 127,
128, 129, 130, 131, 132, 154, 155, 156, 157, 158, 159, 160, 161, 171, 172, 173, 174, 175, 176, 177, 180, 181, 182, 183, 184, 185, 186, 187, 188, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287.

Ordered, that the president and directors present execute a quit-claim deed to Jas. C. Mitchell for the lots as above specified.

(Signed,)
JAS. A. JACKSON,
SAM'L S. BAYLISS,
JAMES REDFIELD, *pro tem.*

At a meeting of the stockholders and directors of the Council Bluffs and Nebraska Ferry Company on the fourth day of January, 1855, present, Jas. A. Jackson, Samuel S. Bayliss, C. H. Downs, and Enos Lowe, the following proceedings were had:

113 *Resolved,* That blocks 70, 72, 74, 76, 78, 80, 83, 85, 87, 89, 91, 93, 110, 140, 147, and 163, in Omaha City, N. T., be divided now between the stockholders according to their respective interests, to wit:

Henn & Williams, one-eighth; James A. Jackson, one-eighth; Samuel S. Bayliss, one-eighth; Samuel M. Ballard, one-eighth; Enos Lowe, one-eighth; C. B. Redfield, one-sixteenth; Street & Baer, one-sixteenth; C. H. Downs, one-sixteenth; William Tanner, one-sixteenth; and Samuel R. Curtis, one-eighth. And thereupon the following division was then made, to wit:

	BLOCKS.							
	70.	72.	74.	76.	78.	80.	83.	85.
Enos Lowe	6	4	3	4	7	6	1	2
Street and Baer	3	----	2	----	----	8	3	----
Samuel R. Curtis	4	5	6	5	3	3	6	7
William Tanner	5	1	----	8	----	1	----	6
C. H. Downs	----	----	7	----	2	----	8	----
Henn and Williams	1	3	1	7	1	5	2	5
James A. Jackson	2	6	5	6	4	4	7	1
Samuel S. Bayliss	7	7	8	2	8	7	5	8
Samuel M. Ballard	8	2	4	3	5	2	4	4
C. B. Redfield	----	8	----	1	6	----	----	3

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	BLOCKS.							
	87.	89.	91.	93.	110.	140.	147.	163.
Enos Lowe	5	6	8	6	3	4	6	8
Street and Baer	----	7	5	----	----	5	7	----
Samuel R. Curtis	4	2	1	4	2	1	5	1
William Tanner	----	3	----	3	----	8	----	----
C. Downs	1	----	4	----	6	----	3	3
Henn and Williams	6	5	6	7	8	3	1	5
James A. Jackson	7	4	3	2	4	6	2	2
Samuel S. Bayliss	3	8	2	8	1	7	4	7
Samuel M. Ballard	2	1	7	1	5	2	8	4
C. B. Redfield	8	----	----	5	7	----	----	6

And be it further resolved, That the president of the company convey to the respective stockholders the lots set apart for them in the preceding allotment.

At a meeting of the president and directors of the Council Bluffs and Nebraska Ferry Company, on Wednesday, the 14th day of February, A. D. 1855, it was

Resolved, That the following blocks of lots situated in Omaha City, Nebraska Territory, be divided by lot according to their respective shares, viz:

Blocks Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 34, 35, 36, 37, 38, 39, 40, 41, 42, 44, 46, 47, 48, 49, 50, 51, 52, 53, 55, 56, 58, 59, 60, 61, 62, 63, 64, 65, and 66.

To which the following persons are entitled to lots in said blocks as follows:

115 James M. Love & Co., two twenty-fourth parts; T. B. Cumming, one twenty-fourth part; M. W. Izard, one twenty-fourth part; Chapman, one twenty-fourth part.

Thereupon the following division or allotment was made, viz:

	BLOCKS.												
	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.		
James M. Love & Co......	....	....	3&5	3	3	....	6&3	....	....	....	6	....	....
T. B. Cumming	....	....	6	....	8	....	7	....	....	8	....	....	....
M. W. Izard	8	....	....	....	....	5	2	....	....	....	3	....	....
—— Chapman......	....	2	....	....	....	3	....	5	....	5	....	....	....

	BLOCKS.												
	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.		
Jas. M. Love & Co.........	2	1	....	7	7	....	1	....	6	8	7&1	....	....
T. B. Cumming...........	....	....	....	6	8	....	....	....	4	....	5	....	....
M. W. Izard...............	....	8	....	....	....	....	7	....	....	4	....	....	....
—— Chapman............	....	....	....	4	5	....	....	5	....	....	....	....	....

	BLOCKS.												
	24.	25.	26.	27.	28.	29.	30.	31.	34.	35.	36.		
J. M. Love & Co...........	....	....	....	2&6	....	4&3	....	....	....	2	8	....	....
J. B Cumming......	....	....	....	....	5	....	....	5	7	....	....	....	....
M. W. Izard...............	1	....	5	....	....	....	....	8	6	....	....	....	....
—— Chapman..............	....	4	8	....	....	....	1	....	....	....	1	....	....

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	BLOCKS.												
	37.	38.	39.	40.	41.	42.	44.	46.	47.	48.	49.	50.	51.
J. M. Love & Co...........	7&8	....	....	4	....	....	7	....	3	....	....	1&4	....
T. B. Cumming............	....	....	2	3	....	....	....	....	....	....	8	....	6
M. W. Izard...............	....	....	5	6	....	....	....	1	1	....	....	....	8
—— Chapman......	4	....	....	....	5	....	....	....	6	....	....	....	....

	BLOCKS.												
	52.	53.	55.	56.	58.	59.	60.	61.	62.	63.	64.	65.	66.
J. M. Love & Co..........	....	....	6	7	....	7	5	1	....	4	6	3	....
T. B. Cumming	....	....	....	8	....	....	7	3	....	....	....	....	1
M. W. Izard...............	....	....	....	1	....	....	1	....	1	....	....	8	....
—— Chapman......	8	....	....	5	....	4	....	....	4	....	....	....	8

It was further resolved that the Council Bluffs and Nebraska Ferry Company now divide by lot the remaining lots contained in the blocks mentioned in the foregoing division. Thereupon the following division was made, viz:

	BLOCKS.												
	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.
Sam'l R. Curtis	5	....	4	4	5	6	....	1	8	4	1	....	4
Sam'l S. Bayliss	6	6	....	7	4	7	....	4	5	6	5	8	....
S. M. Ballard	4	1	7	....	1	....	1	3	3	7	2	5	6
Dr. E. Lowe	1	3	1	6	....	....	5	6	4	2	4	7	3
Jas. A. Jackson	7	7	8	2	....	1	....	7	1	3	7	6	....
Redfield and Street	3	5 R.	....	1 R.	7	8	8 R.	....	2 R.	....	8	3	7 R.
Tanner and Downs	2	4	....	8	6	4	4	2	7	....	....	4	2
—— Williams	....	8	2	5	2	2	....	8	6	1	....	1	5

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	BLOCKS.												
	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.	25.	26.	27.
S. R. Curtis	5	8	....	7&8	....	8	8	7	....	2	6	7	....
S. S. Bayliss	4	1	....	1	8	7	1	6	6	....	2	....	5
S. M. Ballard	....	....	4	2	5	6	5	3	2	3	....	....	8
Dr. E. Lowe	7	....	....	5	4	1	7	1	....	5	3	4	....
J. A. Jackson	6&8	....	1	....	3	4	2	....	8	8	5	6	4
Redfield and Street	1 R.	3	6 R.	4	....	3	3 R.	2	....	4 R.	1	1 R.	1
Tanner and Downs	2	5	2	3	2	....	....	5	4	6	8	2	3
—— Williams	3	2	3	6	6	2	....	....	3	7	7	3	7

	BLOCKS.												
	28.	29.	30.	31.	34.	35.	36.	37.	38.	39.	40.	41.	
S. R. Curtis	8	8	8	1	1	....	7	....	8	8	5	6	....
S S. Bayliss	7	5	7	7	4	7	....	4	5	4	8	....	....
S. M. Ballard	4	1	2	6	2	6	2	....	6	....	2	....	....
Dr. E. Lowe	1	6	3	3	3	3	....	1	4	1	....	....	....
Jas. A. Jackson	....	7	5	2	....	4	3	5	1	7	....	8	....
Redfield and Street	2 R.	....	4	....	5 R.	5	4 R.	6	2 R	6	....	1 R.	....
Tanner and Downs	3	2	....	....	8	8	5	3	7	3	....	3	....
—— Williams	6	....	6	4	....	1	6	2	3	....	1	4	....

	BLOCKS.												
	44.	45.	46.	47.	48.	49.	50.	51.	52.	53.	55.	56.	
S. R. Curtis	3	....	4	4	7	....	3	....	5	3&5	....	2	....
S. S. Bayliss	8	1	2	7	6	7	....	....	7	8	5	6	....
S. M. Ballard	5	2	3	2	3	6	....	5	....	1	4	3	....
Dr. E. Lowe	4	3	6	....	8	1	5&6	4	4	....	1	....	....
Jas. A. Jackson	....	4	7	....	1	4	8	1	6	4	....	....	....
Redfield and Street	1	....	....	8 R.	4	3 R.	7	3 R.	3	6 R.	3	....	....
Tanner and Downs	2	....	8	....	2	2	3	7	1	7	2	....	....
—— Williams	6	....	5	5	....	5	2	2	2	2	4	....	....

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	BLOCKS.												
	57.	58.	59.	60.	61.	62.	63.	65.	66.				
S. R. Curtis	....	2&1	....	8	....	2	5	....	....	....	....	....	....
S. S. Bayliss	....	8	8	6	6	....	....	....	....	....	....	....	....
S. M. Ballard	....	5	6	3	2	....	3	....	....	....	....	....	....
Dr. E. Lowe	4	4	1	2	....	3	6	....	....	....	....	....	....
Jas. A. Jackson	1	6	5	....	5	5	1	....	....	....	....	....	....
Redfield and Street	....	7	3	....	8 R.	6 R.	2	....	....	....	....	....	....
Tanner and Downs	2	....	....	4	7	8	7	....	....	....	....	....	....
—— Williams	3	3	....	....	4	7	8	....	....	....	....	....	....

At a meeting of the president and directors of the Council Bluffs and Nebraska Ferry Company, held at the banking-house of Messrs. Henn, Williams,
Hooten & Co., on the 10th day of September, A. D. 1855, resolved that the
following blocks of lots, situated in Omaha city, Nebraska Territory, be divided
according to their respective interests or shares, viz: Blocks Nos. 67, 68, 69,
94, 95, 96, 97, 98, 99, 125, 126, 127, 128, 129, 130, 131, 132, 154, 155, 156,
157, 158, 158, 159, 160, 161, 171, 172, 173, 174, 175, 176, 177, 180, 181, 182,
183, 184, 185, 186, 187, 188, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199,
200, 201, 202, 203, 204, 205, 206, 207, 208, 229, 210, 211, 212, 213, 214, 215,
216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 228, 229, 230, 231, 232,
233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246,
119 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260,
261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274,
275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287.

To which the following persons are entitled to lots in said blocks, as follows: James M. Love & Co., two twenty-fourth parts; T. B. Cumming, one twenty-fourth part; M. W. Izard, one twenty-fourth part; Chapman, one twenty-fourth part; James C. Mitchell, one twenty-fourth part; and the stockholders of the Council Bluffs and Nebraska Ferry Company, according to their respective shares in said company. Thereupon the following division or allotment was made:

120	BLOCKS.												
	67.	68.	69.	94.	95.	96.	97.	98.	99.	125.	126.	127.	128.
J. M. Love & Co	....	....	1&8	....	....	1&2	......	....	3&4	....	....	4&5	....
J. B. Cuming	....	....	7	....	....	7	......	....	6	....	....	1	....
M. W. Izard	....	....	2	....	....	3	......	....	8	....	....	8	....
Chapman	....	....	....	3	....	....	......	....	1	....	....	7	....
Jas. C. Mitchell	....	....	....	1	....	....	7	....	5	....	....	2	....
Enos Lowe	3&4	....	....	7&8	....	....	11&12	....	2	3&4	....	....	5&6
Street and Baer	1	....	....	4	....	....	8	....	....	6	....	....	1
Sam'l R. Curtis	2	1	....	2	4	....	4&5	....	....	1&2	....	....	3&4
William Tanner	....	8	....	....	1	....	10	....	....	8	....	....	2
C. H. Downs	....	5	....	....	8	....	9	....	....	7	....	....	....
Henn and Williams	....	3&4	....	....	2&3	....	3	1	....	5	4	....	....
Tootle and Jackson	....	6&7	....	....	5&6	....	......	4&5	....	....	1&8	....	....
Sam'l S. Bayliss	....	2	6	....	7	4	......	7&8	....	....	5&6	....	....
S. M. Ballard	....	....	3&4	....	....	5&6	......	2&3	....	....	2&3	....	....
C. B. Redfield	....	....	5	....	....	8	......	6	....	....	7	....	....

	BLOCKS.												
	129.	130.	131.	132.	154.	155.	156.	157.	158.	159.	160.	161.	171.
J. M. Love & Co	....	1&8	....	....	1&8	....	....	7 & 8	....	....	3&4	....	....
T. B. Cuming	....	2	....	....	....	....	....	12	....	....	5	....	....
M. W. Izard	....	3	....	....	2	....	....	1	....	....	8	....	....
Chapman	....	7	....	....	....	....	....	2	....	....	2	....	....
Jas. C. Mitchell	....	5	....	....	....	5	....	11	....	....	7	....	....
Enos Lowe	....	....	5&6	....	....	3&4	....	9 & 10	....	....	3&4	....	....
Street and Baer	....	....	1	....	....	1	....	4	....	....	....	1	....
Sam'l R. Curtis	....	8&7	....	....	....	7&8	....	......	3&4	....	....	2&8	....
Wm. Tanner	....	....	2	....	....	2	....	......	1	....	....	7	....
C. H. Downs	1	....	3	....	....	6	....	......	2	....	....	6	....
Henn and Williams	3&4	....	....	5&6	....	....	3&4	......	....	1&2	....	....	1&2
Tootle and Jackson	5&6	....	....	7&8	....	....	5&6	......	....	3&4	....	....	3&4
Sam'l S. Bayliss	8&9	....	....	3&4	....	....	7&8	......	....	7&8	....	....	7&8
S. M. Ballard	2&7	....	....	1&2	....	....	1&2	......	....	5&6	....	....	5&6
C. B. Redfield	....	4	....	....	7	....	....	5	....	....	1	....	....

121 BLOCKS	172	173	174	175	176	177	180	181	182	183	184
J. M. Love & Co.	3 & 4			7 & 8				3 & 5		8	1
T. B. Cumming	8			2				8			2
M. W. Izard	2					1		7			3
——— Chapman	5					4		6			4
Jas. C. Mitchell	7					2			4		
Enos Lowe		3 & 4				3 & 5			1 & 2		
Street & Baer		8				8			5		
S. R. Curtis		5 & 6				7 & 6			6 & 7		
Wm. Tanner		7					3		3		
C. H. Downs		2					4		8		
Henn & Williams			1 & 2				5 & 6			4 & 5	
Tootle & Jackson			3 & 4				1 & 2			6 & 7	
S. S. Bayliss			5 & 7				7 & 8			9 & 10	
S. M. Ballard				4				1 & 2		1 & 2	
C. B. Redfield	1							4		3	

122 BLOCKS	202	203	204	205	206	207	208	209	210	211	212
J. M. Love & Co.						2 & 3		8	6		8 & 9
T. B. Cumming			8			6			5		7
M. W. Izard						4			4		3
——— Chapman	3		1			8			7		4
Jas. C. Mitchell	1			4		5			1		6
Enos Lowe	5 & 6			1 & 2		1	5		2 & 8		5
Street & Baer	2			7			2		3		
S. R. Curtis	7 & 8			5 & 6			7 & 8			1 & 2	
Wm. Tanner		5		3			1			3	
C. H. Downs		6		8			4			4	
Henn & Williams		3 & 4			3 & 4		3 & 6			5 & 6	
Tootle & Jackson		1 & 2			5 & 6			3 & 4		7 & 8	
S. S. Bayliss		7 & 8			7 & 8			1 & 2			11&12
S. M. Ballard			2 & 3		1 & 2			5 & 6			1 & 2
C. B. Redfield			7			7		7			10

123 BLOCKS	230	231	232	233	234	235	236	237	238	239	240
Jas. M. Love & Co.	6		5	7		1	6		8	6	
T. B. Cumming	7			6			7			7	
M. W. Izard	5			8			8			8	
——— Chapman	2			5			1			5	
Jas. C. Mitchell	1			4			4			1	
Enos Lowe	3	4		3	4		2	5		2	6
Street & Baer		6			7			1			1
Sam'l R. Curtis		7 & 8			5 & 6			2 & 3			2 & 3
Wm. Tanner		2			1			8			4
C. H. Downs		1			8			7			5
Henn & Williams		3 & 5			2 & 3			4 & 6			
Tootle & Jackson			3 & 4			3 & 4			3 & 4		
Sam'l S. Bayliss			1 & 2			5 & 6			1 & 6		
S. M. Ballard			7 & 8			7 & 8			5 & 8		
C. B. Redfield			6			2			2		

124 BLOCKS	257	258	259	260	261	262	263	264	265	266	267
Jas. M. Love & Co.	6		5	1		5	2		8	2	
T. B. Cumming	7			2			3			1	
M. W. Izard	8			3			4			4	
——— Chapman	3			4			6			3	
Jas. C. Mitchell	1			8			1			8	
Enos Lowe	5	4		5	4			3 & 4			3 & 4
Street & Baer		6			7					7	
Sam'l R. Curtis		7 & 8			5 & 6			7 & 8			7 & 8
Wm. Tanner		2			1			2			1
C. H. Downs		1			2			1			2
Henn & Williams		3 & 5			3 & 8			5 & 6			5 & 6
Tootle & Jackson			1 & 2			3 & 4			3 & 4		
Sam'l S. Bayliss			3 & 4			1 & 2			1 & 2		
S. M. Ballard			7 & 8			7 & 8			5 & 6		
C. B. Redfield			6			6			7		

185	186	187	188	190	191	192	193	194	195	196	197	198	199	200	201
......	......	3 & 4	......	......	1 & 2	......	......	2 & 3	......	5	7	......	......	......	3 & 4
......	......	2	......	......	8	......	......	8	......	......	5	......	......	......	5
......	......	8	......	......	7	......	......	7	......	......	1	......	......	......	......
......	......	5	......	......	6	......	......	1	......	......	2	......	......	......	......
4	......	7	......	......	......	1	......	5	......	......	8	......	......	......	......
1 & 2	......	6	4	......	......	7 & 8	......	6	1	......	3 & 4	......	......	......	......
8	......	......	1	......	......	4	......	......	8	......	6	......	......	......	......
7	......	......	2 & 3	......	......	5 & 6	......	......	6 & 7	......	......	7 & 8	......	......	......
5	......	......	6	......	......	3	......	......	3	......	......	4	......	......	......
6	......	......	5	......	......	2	......	......	4	......	......	1	......	......	......
......	1 & 2	......	7 & 8	......	......	......	7 & 8	......	2 & 5	......	......	5 & 6	......	......	......
......	3 & 4	......	......	7 & 8	......	......	5 & 6	......	......	1 & 2	......	2 & 3	......	......	......
......	5 & 6	......	......	1 & 2	......	......	1 & 2	......	......	3 & 4	......	......	......	......	1 & 2
......	7 & 8	......	......	......	3 & 4	......	3 & 4	......	......	6 & 7	......	......	......	......	6 & 7
......	......	1	......	......	5	......	......	4	......	8	......	......	......	......	8

213	214	215	216	217	218	219	220	221	222	223	224	225	226	228	229
......	8	1	......	5 & 8	......	......	......	......	......	6 & 7	......	5	3	......	5
......	......	2	......	1	......	......	......	......	......	5	......	......	6	......	......
......	......	3	......	......	1	......	5	......	......	4	......	......	4	......	......
......	......	7	......	......	7	......	......	......	......	1	......	......	2	......	......
......	......	5	......	......	4	......	......	1	......	8	......	......	8	......	......
2	......	4 & 8	......	......	5 & 6	......	......	3 & 4	......	3	8	......	5	1	......
6	......	6	......	......	8	......	......	2	......	......	3	......	......	6	......
7 & 8	......	......	7 & 8	......	2 & 3	......	......	6 & 7	......	......	5 & 6	......	......	7 & 8	......
4	......	......	4	......	......	1	......	5	......	......	7	......	......	4	......
3	......	......	5	......	......	2	......	8	......	......	1	......	......	3	......
8 & 1	......	......	1 & 2	......	......	3 & 4	......	......	1 & 2	......	2 & 4	......	......	2 & 5	......
......	3 & 4	......	3 & 6	......	......	5 & 6	......	......	3 & 4	......	......	1 & 2	......	......	1 & 2
......	1 & 2	......	......	3 & 4	......	7 & 8	......	......	7 & 8	......	......	3 & 4	......	......	3 & 4
......	5 & 6	......	......	6 & 7	......	......	6 & 7	......	5 & 6	......	......	7 & 8	......	......	6 & 7
......	7	......	......	2	......	......	8	......	......	2	......	6	......	......	8

241	242	243	244	245	346	247	248	249	250	251	252	253	254	255	256
6	5	......	1	7	......	5	7	......	5	7	......	5	7	......	8
......	4	......	......	6	......	......	8	......	......	8	......	......	8	......	......
......	3	......	......	5	......	......	6	......	......	6	......	......	1	......	......
......	2	......	......	8	......	......	2	......	......	2	......	......	2	......	......
......	1	......	......	4	......	......	1	......	......	1	......	......	4	......	......
......	6.7 & 8	5	......	3	1	......	5	1	......	5	1	......	3	1	......
......	......	8	......	......	6	......	......	7	......	......	2	......	......	6	......
......	......	7 & 1	......	......	7 & 8	......	......	2 & 3	......	......	7 & 8	......	......	7 & 8	......
......	......	4	......	......	3	......	......	4	......	......	3	......	......	5	......
......	......	6	......	......	4	......	......	5	......	......	4	......	......	3	......
9 & 10	......	2 & 3	......	......	5 & 2	......	......	6 & 8	......	......	5 & 6	......	......	2 & 4	......
1 & 2	......	......	5 & 6	......	......	1 & 2	......	......	1 & 2	......	......	1 & 2	......	......	1 & 2
4 & 5	......	......	3 & 4	......	......	3 & 4	......	......	3 & 4	......	......	3 & 4	......	......	3 & 4
3 & 8	......	......	2 & 7	......	......	7 & 8	......	......	6 & 7	......	......	7 & 8	......	......	5 & 6
7	......	......	8	......	......	6	......	......	8	......	......	6	......	......	7

268	269	270	271	272	273	274	275	276	477	278	279	280	281	282	283
2	3	......	......	7 & 8	......	......	4 & 6	......	......	10&11	......	......	4 & 5	......	......
......	1	......	......	4	......	......	5	......	......	12	......	......	6	......	......
......	2	......	......	5	......	......	8	......	......	1	......	......	......	4	......
......	4	......	......	6	......	......	7	......	......	2	......	......	......	3	......
......	5	......	......	......	8	......	......	8	......	......	12	......	......	8	......
......	......	3 & 4	......	......	3 & 4	......	......	1 & 2	......	......	10&11	......	......	5 & 6	......
......	8	......	......	......	6	......	......	6	......	......	3	......	......	7	......
......	......	7 & 8	......	......	5 & 7	......	......	3 & 4	......	......	......	1 & 2	......	......	7 & 8
......	......	2	......	......	......	8	......	7	......	......	......	3	......	......	1
......	......	1	......	......	......	7	......	5	......	......	......	4	......	......	2
......	......	5 & 6	......	......	......	5 & 6	......	......	7 & 8	......	......	7 & 8	......	......	3 & 4
5 & 6	......	......	3 & 4	......	......	3 & 4	......	......	5 & 6	......	......	5 & 6	......	......	5 & 6
3 & 4	......	......	1 & 2	......	......	1 & 2	......	......	1 & 2	......	......	......	7 & 8	......	......
7 & 8	......	......	......	1 & 2	......	......	1 & 2	......	3 & 4	......	......	......	1 & 2	......	......
1	......	......	......	3	......	......	3	......	......	......	......	......	3	......	......

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	BLOCKS.				
	284.	285.	286.	287.	
James M. Love & Co	8&2			5&6	
T. B. Cumming	1			1	
M. W. Izard		4			
—— Chapman		3			
Jas. C. Mitchell		8			
Enos Lowe		5&6			
Street and Baer		2			
Sam'l R. Curtis			3&4		
Wm. Tanner			6		
C. H. Downs			5		
Henn and Williams			7&8		End of division of twenty-fourth parts in foregoing blocks.
Tootle and Jackson			1&2		
Sam'l S. Bayliss	5&6			7&8	
S. M. Ballard	3&4			3&4	
C. B. Redfield	7			2	

The remaining undivided twenty-fourth interest in the following were set apart to the following persons on the 27th Nov., 1855, in the order as follows :

	BLOCKS.												
	288.	289.	290.	291.	292.	293.	294.	295.	296.	297.	298.	299.	
Jas. M. Love & Co	8		7	2	3		2	4		[illegible]	6		
T. B. Cumming		5			2			2			8		
M. W. Izard			8			1		6				6	
B. B. Chapman		4				2			6			5	

	BLOCKS.												
	300.	301.	302.	303.	304.	305.	306.	307.	308.	309.	310.	311.	
Jas. M. Love & Co	3	2		1	2		[illegible]&2			3&7			
T. B. Cumming			2			2			5		3		
M. W. Izard			6		5				6		6		
B. B Chapman		6		7					2	5			

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	BLOCKS.												
	312.	313.	314.	315.	316.	317.	318.	319.	320.	321.	322.		
J. M. Love & Co	3&1			3&1			1	7					
T. B Cumming		[illegible]			1		5						
M. W. Izard		[illegible]			3			1					
B. B. Chapman			4			1					1		

At a meeting of the president and directors of the Council Bluffs and Nebraska Ferry Company, at the banking-house of Messrs. Henn & Williams, Hooten & Co., November 27th, 1855, it was ordered the remaining undivided lots in the following blocks be divided between the stockholders, according to their respective shares, viz: Blocks 71, 73, 75, 77, 79, 81, 82, 84, 86, 88, 90, 92, 100, 101, 103, 105, 107, 111, 112, 113, 114, 115, 116, 117, 122, 124, 133, 134, 141, 142, 143, 145, 146, 151, 164, 166, 168, 170, 144, 94, 97, 99, 127, 130, 131, 157, 160, 161, 172, 173, 175, 226, 230, 233, 236, 239, 245, 248, 251, 254, 257, 260, 263, 264, 269, 273, 276, 279, 282, 285, 227, 335, 338, 339, 340, 341, 342, 343, 344, 345, 347, 349, 351, 253.

To which the following persons are entitled to the undivided lots still remaining in said blocks, as follows: Enos Lowe, one-eighth part; Street and Redfield, one-eighth part; Sam'l R. Curtis, one-eighth part; Tanner and Downs, one-eighth part; Henn and Williams, one-eighth part; Tootle and Jackson, one-eighth part; Sam'l S. Bayliss, one-eighth part; S. M. Ballard, one-eighth part.

The following division was then made:

127	BLOCKS.										
	71.	73.	75.	77.	79.	81.	82.	84.	86.	88.	90.
Enos Lowe	5	....	3	....	4	4	....	5	....	5	....
Street and Redfield	....	....	....	....	3 R.	5 S.	....	6 R.	....	7 S.	....
Sam'l R. Curtis	....	4	....	....	2	6	....	7	3	....	....
Tanner and Downs	8	....	D. 4 & 8 D.	....	5 D.	3	1	....	5	....	3 D.
Henn and Williams	6	8	7	....	8	8	2	....	....	....	2
Tootle and Jackson	7	5	6	....	7	7	....	1	....	4	7
Sam'l S. Bayliss	....	2&7	....	1	6	1	....	2	1	....	....
S. M. Ballard	....	3&6	....	....	1	2	....	3	....	....	....

BLOCKS.

	92.	100.	101.	103.	105.	107.	111.	112.	113.	114.	115.	116.	117.	122.	124.	133.	134.	141.	142.	143.	145.	146.	151.	164.	166.	168.
Enos Lowe	1	4					1&5				6		3			6					1	1			2&7	
Street and Redfield	2 R.						6 S.	2 R.				7 S.						4 R.				8 S.		1 R.		7 S.
Sam'l R. Curtis	3						4		1		8							3	8			2		5	8	
Tanner and Downs		1	8 D.				2 D.				4D &7				2	8			6 D.				5		1 D.	4
Henn and Williams	4			7			3				5	4				7					6	5		8		5
Tootle and Jackson		5	1	6				1		1			1&5					2	5			7		3	4	3 & 8
Sam'l S. Bayliss	6				4		8			8				1			8				5	6			5&6	
S. M. Ballard	7					7	7			5		6							1	1	8					6

BLOCKS.

	170.	144.	94.	97.	99.	127.	130.	131.	157.	160.	161.	172.	173.	175.	226.	230.	233.	236.	239.	245.	248.	251.	254.	257.	260.	263.
Enos Lowe	5&6							4						6			1							4		
Street and Redfield		1 S.		1 R.			6 R.			6 S.							2 R.			1 S.			5 R.			
Sam'l R. Curtis				2					5		5							5		2			6			
Tanner and Downs	8 D.								4						7 D.			3				4 D.			7	
Henn and Williams			6		7										1				4			3			6	
Tootle and Jackson	1				1								1						3		3					8
Sam'l S. Bayliss			5			3								3		4					7					7
S. M. Ballard	4					6						6				8					4			2		

	BLOCKS.																									
	266.	269.	273.	276.	279.	282.	285.	227.	335.	336.	337.	338.	339.	340.	341.	342.	343.	344.	347.	349.	351.	353.				
Enos Lowe		7			7		7			6	5		5		5		8	1&3		7	6	7				
Street and Redfield	55					1 R.			65		6 R.		7 S.			7 R.	7 S.	2 R.		6 S.	2 R.	8 S.				
Sam'l R. Curtis	6				1			5	8		7		6			6					7	2				
Tanner and Downs		6						1D & 8	7 D.		8			5 D.		5			5	1 D	4 D.	3 D.				
Henn and Williams			2		2			2 & 7		5		6		8	8					4	1	5				
Tootle and Jackson			1					4		8		5		6	7					8	5	4				
Sam'l S. Bayliss				5		2		3		7		8	8		6					5	8	6				
S. M. Ballard				6			1	6	5			7		7		8				3	3	1				

COUNCIL BLUFFS, *August* 6, 1853.

2 *Sundries, Dr. To joint stock account Council Bluffs & Nebaska Ferry Co.*

5.	Wm. B. Street, for	1	share of capital stock, at $500 per share	$500 00
6.	J. H. D. Street	1	“ “ “ “ “	500 00
7.	Tootle & Jackson	2	“ “ “ “ “	1,000 00
8.	Sam. S. Bayliss	2	“ “ “ “ “	1,000 00
9.	Dr. E. Lowe	2	“ “ “ “ “	1,000 00
10.	S. M. Ballard	2	“ “ “ “ “	1,000 00
11.	Jesse Williams	2	“ “ “ “ “	1,000 00
12.	Brown & Curtis	4	“ “ “ “ “	2,000 00
				8,000 00

3. *Cash, Dr. to sundries.*

5.	Wm. B. Street, for 1st installment of 1 share, ⅓ capital stock paid in....................................		166 66⅔
6.	J. H. D. Street, for 1st installment of 1 share, ⅓ capital stock paid in....................................		166 66⅔
7.	Tootle & Jackson, for 1st installment of 2 shares, ⅓ capital stock paid in....................................		333 33⅓
8.	Sam'l S. Bayliss, for 1st installment of 2 shares, ⅓ capital stock paid in....................................		333 33⅓
9.	Dr. E. Lowe, for 1st installment of 2 shares, ⅓ capital stock paid in....................................		333 33⅓
10.	S. M. Ballard, for 1st installment of 2 shares, ⅓ capital stock paid in....................................		333 33⅓
11.	Jesse Williams, for 1st installment of 2 shares, ⅓ capital stock paid in....................................		333 33⅓
12.	Wm. D. Brown and S. R. Curtis, received of Wm. B. Street and other stockholders in part payment of their first installment..............	$292 61	
	Ditto for land and ferry privileges received as cash for balancing of first installment............	374 35	
			666 66⅔
			2,666 66

12. *Wm. D. Brown and S. R. Curtis, Dr. to sundries.*

5.	Wm. B. Street, for cash paid, part of your 1st installment....	24 38
6.	J. H. D. Street, “ “ “	24 38
7.	Tootle & Jackson, “ “ “	48 77
9.	Dr. E. Lowe, “ “ “	48 77
10.	S. M. Ballard, “ “ “	48 77
11.	Jesse Williams, “ “ “	48 77
8.	S. S. Bayliss, “ “ “	48 77
		292 61

1. *Council Bluff and Nebraska Ferry Co., Dr.*

3.	To cash paid, order of board, for lands, &c	1,496	60
	" " to Dr. Lowe for purchasing ferry boat,	1,170	00
		2,666	66

130 COUNCIL BLUFFS, *October* 13, 1853.

3. *Cash, Dr. to sundries.*

5.	Wm. B. Street, for ¼ of capital stock paid in on	1	share	125	00
6.	J. H. D. Street, " "	1	"	125	00
7.	Tootle & Jackson, " "	2	"	250	00
8.	Sam'l S. Bayliss, " "	2	"	250	00
9.	Dr. E. Lowe, " "	2	"	250	00
10.	Williams & Henn, " "	2	"	250	00
11.	S. M. Ballard, " "	2	"	250	00
22.	Brown and Curtis received of W. B. Street and other stockholders above 4 shares			500	00
				2,000	00

12. *Brown & Curtis, Dr. to sundries.*

5.	Wm. B. Street, for cash paid your ¼ of capital stock	41	66⅔
6.	J. H. D. Street, " " "	41	66⅔
7.	Tootle & Jackson, " " "	83	33⅓
8.	S. S. Bayliss, " " "	83	33⅓
9.	Dr. E. Lowe, " " "	83	33⅓
10.	S. M. Ballard, " " "	83	33⅓
11.	Williams & Henn, " " "	83	33⅓
		500	00

1. *Council Bluffs & Nebraska Ferry Co., Dr. to cash.*

3.	To cash paid, part of the purchase and expense of ferry boat	1,162	37
	Oct. 14. To cash paid Dr. Lowe, for purchasing boat and expense as per bill	410	14
	To cash paid Clark for entering wood at ferry, (Oct. 29.)	1	25
	" " T. J. Allen for board for boy, (Dec. 20)	14	00
	" " Tootle & Jackson, (Dec. 25)	47	80
	" " Minton on contract for grade, (Jan. 3, '54)	155	00
	" " Brown & Curtis, (Jan. 4)	620	22
	" " J. E. Johnson for printing bills	18	00
		2,428	78

3. *Cash, Dr. to sundries.*

8.	S. S. Bayliss for ⅕ of capital stock paid in................	200 00
7.	Tootle & Jackson, for ⅕ of capital stock paid in...........	200 00
12.	Brown & Curtis rec'd of S. R. Curtis by Dr. Lowe, (Jan. 12)	200 00
9.	Dr. E. Lowe, (Jan. 14)................................	200 00
11.	Henn & Williams, (Jan. 31.)...........................	200 00
10.	S. M. Ballard, (March 6).............................	200 00
		1,200 00

131. Apr. 5.

1. *Council Bluffs & Nebraska Ferry Co.*

3.	To cash paid Tootle & Jackson for am't of ac. rendered to 5th Ap'l......................................	639 01

3. Council Bluffs, *April* 12, 1854.

3. *Cash, Dr. to Sundries.*

13.	Ferry ac. for am't rec'd for ferriages....................	7 50
10.	S. M. Ballard re'd Ap'l 11th as 2½ per cent. on capital stock	215 00
		222 50

Cash, Dr. to Sundries.

13.	Ferry ac. for tickets sold................................	4 40
	Do " " ferriages of Capt. Beck, Ap'l 28..........	175 00
	Do " " " " " May 1...........	125 00
	Do " " " " " " 4..........	125 00
	Do " " " " " May 11	250 95
	Do " rec'd of Ne Plus Ultra " 13..........	97 64
11.	Williams & Henn re'd Ap'l 11, as 2½ p'r c't. capital stock..	215 00
13.	Ferry ac. re'd of Capt. Beck one $5 Calif. gold, May 16.	150 00
	Do " on settlement, May 17.	52 76
	Do " C. H. Downs on Gen'l Marion " 18.	70 00
	Do " do " " " 23.	94 70
	Do " do " " " 25.	50 00
	Do " do " " " 31.	25 00
	Do " do " " June 3..	25 00
	Do " do " " " 5..	35 00
		1,495 45

13. *Ferry Account, Dr.*

3.	To cash paid Wm. Cross bal. on 13 days' work on Gen'l Marion, 83⅓..................................	8 33
	" " " Bolinger, at Elkhorn......................	20 00
	" " " Dennison, " " for bed-clothes..........	6 00
	" " " Tanner's expenses to Loup Fork and back...	3 25
	" " " for loss on sovereigns taken at $5...........	95
		38 53

3. *Cash, Dr.*

13.	To Elkhorn Ferry am't rec'd of D. Cook	50 00
	" " " of Tanner, May 8	559 80
	" " " do " 18	299 96
	Loup Fork " do " "	525 00
		1, 434 76

132.

3. *Cash, Dr.*

13.	To ferry ac. rec'd of C. H. Downs, Marion, June 7	16 00
	" " " Tanner from Loup Fork, " 12	500 00
	" " " do Elkhorn, " 12	414 02
	" " " C. H. Downs, June 15	10 00
		940 02

13. *Ferry Account, Dr.*

3.	To cash p'd M. Corbin for 12 days' work, at $25 p'r mo. on Gen'l Marion, May 31	10 00
	" " Higby, bal. on work, " "	9 33
	" " Eli Carr for trip, &c., to Loup Fork	31 00
	" " board of hands, &c., at Loup Fork	28 77
	" " Rob't Jamison for work at Elkhorn	85 00
	" " Thos. J. Dill	41 00
	" " J. C. Margnom bal. as p'r ac. rendered	63 16
		$268 26

1. *Council Bluffs & Nebraska Ferry Co.*

3.	To cash handed Dr. E. Lowe to pay on boat	$1,000 00

3. *Cash, Dr. to Ferry Co.*

13.	Rec'd of C. H. Downs, June 22	19 00
	Do " June 26	11 00
	Do " " 28	18 00
	Do " July 3	10 95
	Do " " 7	14 50
	Do " " 11	14 00
	Do " " 13	10 00
		97 45

13. *Ferry Co. Ac't.*

3.	To cash paid Tanner, as p'r ac't	125 00
	" " Bigler, "	38 85
	" " Whitted, " July 10	15 35
	" " D. McDonald, as per ac't, July 10	16 00
	" " Dr. Hawksworth, " " 10	271 00
		466 20

13.	*Ferry Co.*	
3.	To cash p'd hand with Tanner, as p'r mer.	2 50

3.	*Cash, Dr. to Ferry Co.*	
13.	Rec'd of C. H. Downs, July 15	13 50

133

1.	*Council Bluffs & Nebraska Ferry Co.*	
3.	To cash paid Harrison Johnson, as per order and bill	170 00
	" " Alex. Davis, " "	100 00
	" " J. V. Jeffries & Co. " "	329 81
	" " Tootle & Jackson, " July 17, "	720 11
	" " Dr. E. Lowe, " "	129 53
		1, 449 45

3.	*Cash, Dr.*	
8.	To Dr. E. Lowe, for 21½ p'r c't capital stock paid	215 00
8.	Sam'l S. Bayliss, " " " "	215 00
		430 00

1.	*Council Bluffs & Nebraska Ferry Co.*	
3.	To cash p'd S. S. Bayliss, ac. as rend.	107 67

JULY 19.

3.	*Cash, Dr.*	
14.	To S. R. Curtis, for 50 p'r c't capital stock	187 50

JULY 19, 1854.

14.	*Sam'l R. Curtis, Dr.*	
	To Council Bluff & Nebrasba Ferry Co., for cash paid on contract for grade, Jan'y 14	620 22
	To am't paid Wm. D. Brown, for grade, Ap'l 6	188 89
	" do " July 19	27 92
		837 03

1.	*Council Bluffs & Nebraska Ferry Co., Dr.*	
14.	To Sam'l R. Curtis, for work on grade, as p'r contract	1, 100 00

14.	*S. R. Curtis, Dr.*	
12.	To Brown & Curtis for bal's due on grades, p'r order	262 97

3. *Cash, Dr.*

13.	To Ferry Co., rec'd of C. H. Downs,	July 20	20 00
	" " " "	" 25	14 00
	" " " "	" 27	8 00
			42 00

1. *Council Bluffs & Nebraska Ferry Co.*

3.	To cash p'd Thos. Davis, as p'r order of board		48 20
	" do " S. S. Bayliss, " "	Aug. 2	43 00
	" do " Benj. Sperry Downs' order	Aug. 17	100 00
	" do " for repairs on bridge		2 00
	Thos. Davis, on contract		100 00
			293 20

134

3. *Cash Dr.*

13.	To C. B. & N. F. Co., of Downs,	Aug. 2	10 00
	" " "	" 7	17 00
	" " "	" 8	5 00
	" " "	" 12	24 00
	" " "	" 15	17 00
	" " "	" 15	9 00
	" " Sperry	" 17	17 55
	" " "	" 21	25 00
	" " "	" 23	14 00
	" " "	" 26	20 00
	" " "	" 29	7 00
	" " "	" 31	31 00
	" " "	Sept. 6	24 00
	" " "	" 8	22 00
	" " "	" 15	30 00
	" " "	" 7	17 00
			289 55

3. *Cash, Dr.*

15.	To Downs & Tanner, rec'd Sept. 8th, Wm. Tanner, for his half of 50 p'r c't capital stock on N. T.	93 75

COUNCIL BLUFFS, *Sept.* 15, 1854.

3. *Cash, Dr.*

5.	To Wm. B. Street, 50 p. c't capital stock N. T		93 75
13.	Ferry ac. of C. H. Downs, (Sept. 22.)		26 00
	" Dr. E. Lowe, p'd him by Dr. Clark, for ferriage		7 00
28.	" of C. H. Downs rec'd for ferriages,	Sept. 28	60 50
	" " " "	" 29	5 50
			192 75

1.	*Council Bluffs & N. Ferry Co.*		
3.	To cash p'd E. Houn, bill for oil, Sept. 29..........	7	50
	" p'd N. Friend, as p'r ac. Oct. 2..........	164	65
	" p'd Dr. E. Lowe, " ren'd Oct. 2..........	33	50
	" p'd C. Hoffmans, bill work "	45	10
		250	75

3.	*Cash, Dr.*		
16.	To Omaha City lots, for lots 3 and 4 in block 122, sold Wm. W. Wyman, Madison, Wis....................	150	00
135			

3.	*Cash, Dr.*		
9.	To Dr. E. Lowe, for in'st and 50 p. c't capitol stock p'd in.	187	50
13.	" Ferry Co. rec'd C. H. Downs, Oct. 9......	65	00
	" " B. Winchester for ferriage, Oct. 10......	25	00
		277	50

17.	*A. D. Jones, Dr.*		
13.	To Ferry ac. for ferriage, up to 24th Sept................	17	85
1.	" C. B. & N. F. Co., 3 hands ½ day each	2	25
	" " " 3 days lost in surveying town, in consequence of his error, at 3..................	9	00
		29	10
3.	Cash paid, bal's due on ac............................	61	18
		90	28

1.	*Council Bluffs & Nebraska Ferry Co., Dr.*		
17.	To A. D. Jones, for am't of ac. ren'd for surveying town, &c.	90	28

1.	*Council Bluffs & Neb. Ferry Co.*		
3.	To cash p'd B. Winchester............................	380	00
	" do " S. S. Bayliss, as p'r yr. order, $25, and $7, 50...	32	50
	" " " Thos. Davis, on contract..................	300	00
		712	50

3.	*Cash, Dr.*		
13.	To Ferry Co., of C. H. Downs, Oct. 18..............	58	00
	" " " " " 23..............	39	50
	" " " " " 25..............	17	00
	" " " " " 31..............	27	00
	" " " " " 2..............	17	35
	" " " " " 3..............	19	00
	" " " " Nov. 12..............	34	00
	" " " " " 16..............	58	00
	" " " " " 21..............	29	00

COUNCIL BLUFFS CITY, *Oct.* 26, 1854.

3. *Cash, Dr. to Omaha City Lots.*

16.	Rec'd of Jas. L. Byers	100	00
	" And. J. Poppleton, for lots 3 and 4, block 138	225	00

18. *Bills receivable, Dr.*

16.	To Omaha City lots for A. D. Gwyer, note due 1st May	105	00
	To Jas. L. Byers, dated Oct. 24, due 6, Mo	75	00

136 OCTOBER, 28.

1. *Council Bluffs & Nebraska Ferry Co.*

3.	To cash p'd Thomas Davis, on contract	200	00
	" " " Thos. Davis, order to Johnson, Nov. 1st	50	00
	" " " J. Ireland, on contract for burning brick, Nov. 2.	25	00
	" " " Thos. Davis, order to J. Stewart, Nov. 6	100	00
	" " " Thos. Davis, on contract	100	00
	" " " am't p'd McDonall, on Downs's order	30	00
	" " " McMehan for tax, Ap'l 6	6	00
	" " " Ireland, for burn. brick	20	00
	" " " J. Ireland, bal's on contract	31	00
		262	00

3. *Cash, Dr.*

5.	To Wm. B. Street, p'd by T. & Jas. rec'd of J. H. D. Street, June 28, 1854	118	85

1. *Council Bluffs & N. F. Co.*

3.	Nov. 21, to cash p'd T. Davis	300	00

3. *Cash, Dr.*

1.	To C. B. & N. Ferry Co., re'd of C. H. Downs, Nov. 30	42	00
5.	" Wm. B. Street, capital stock, Nebraska side, Dec. 11	93	75
9.	" Dr. E. Lowe, bal's on capital stock	187	50
8.	" Sam'l S. Bayliss, part	150	00
11.	Henn & Williams, of J. Cooper, Dec. 18	376	67
		849	92

1. *Council Bluffs & N. Ferry Co.*

3.	To cash p'd Michal Keiffer, p'r Downs's order for 13½ days work, Dec. 7		13	50
	To cash p'd Anson Corbin p'r Downs order,	Dec. 8	79	00
	" do " T. Davis order to Bedell,	" 13	33	65
	" do " T. Davis on contract,	" 16	220	00
	" do " T. Davis,	" 16	100	00
	" do " E. Lowe's order for ferry flat,	" 18	14	00
	" do " Downs order to Higby "	" 18	30	00
	" " " " " " Wm. Able,	" 23	29	50

137 DECEMBER 21st, 1854.

1. *Council Bluffs & N. Ferry Co.*

3.	To cash pd. Prest's order to Higby	$63 95
	" " Thos. Davis on contract	150 00
	" " Bosha for ferry flat	25 00
	" " Sperry by Downs's order	37 00
	" " J. C. Mitchell for boat	25 00
	" " S. S. Bayliss for bills rend	32 30
	" " Coleman & Gage for Downs	11 00
	" " Thos. Davis on contract, Jan'y 12	15 00
		361 56

3. *Cash, Dr.*

6.	To J. H. D. Street, by the hand of J. Redfield	$100 00
6.	" " " " Jan. 4, '55	295 83
8.	To S. S. Bayliss pd. bals. capital stock, Jan. 4, '55	225 00
16.	To Omaha City lots, for lots sold 20 to Hower, Jan'y, for lots 1, 2, 3, 4, in block 153	250 00
	To Sam'l R. Curtis, Feb'y 3	187 50
		1,058 33

1. *Council Bluff & Nebraska Ferry Co.*

3.	To cash paid Thos. Davis at Omaha, Jan. 20	$50 00
	" " Wm. Byers order for staking lots in Omaha	10 00
	" " Ferryman on day of sale Omaha lots	15 00
		75 00

19. *Mr. Lathrop, Dr.*

3.	To cash loaned, Jan. 20	50 00

1. *Council Bluffs, Nebraska Ferry.*

3.	To cash pd. B. B. Perno, Jan'y 22	50 00
	" " Geo. Reed on wood, Jan'y 22	75 00
	" " discount on uncurrent money	10 50
	" " Thos. Davis on contract, Feb'y 3	150 00
		285 50

JANUARY 31st, 1855.

1. *Sundries, Dr. to Council Bluffs & Nebraska Ferry Co., for brick building sold to Government.*

3.	Cash		1,000 00
18.	Bills recbl. for 1 note, T. B. Cummings, 12mo.	1,800 00	3,800 00
	" " " " 6mo.	2,000 00	
138			4,800 00

18. *Bills receivable, Dr.*

3.	To cash for D. Lindley's note	15 75
	" " Wells & Bro's	34 29
		50 00

1. *Council Bluffs & Nebraska Ferry Co.*

3.	To cash pd. men for having census taken	16 00
	" " Turley bill, Dec. 21	20 29
	" " " beef, "	2 92
	" " Benj. Sperry, Dec. 30	162 75
	" " Dr. Lowe's order to Perno, July 8	30 00
	" " " " G. J. Reid, July 9	40 00
	" " " " Thos. Davis, July 10	20 00
	" " " " Nath'l Covey Downs, July 11	30 56
	" " " " Perno, July 11	10 00
	" " Thos. Davis order to R. D. Aney, July 13	55 75
	" " Keiffer for Downs order, July 15	10 00
	" " Cravens, July 16	8 00
	" " M. Rogers bill, stoves, July 25	109 30
		515 57

3. *Cash, Dr.*

7.	To Tootle & Jackson for instalments due on stock	375 00

1. *Council Bluffs and Nebraska Ferry Co.*

3.	To cash paid Thos. Davis, bal. on contract	1,330 60
3.	" " Tootle & Jackson, Feb'y 10	676 10

Examined and settled to date, Feb'y 10, 1855.

COUNCIL BLUFFS CITY, *Feb'y* 12, 1855.

Council Bluffs & Nebraska Ferry Co.

4.	To cash paid Geo. J. Reid on wood contract	50 00
	" " R. S. Hardin for 24 cords wood	72 00
	" " Dr. Lowe's order to B. B. Perno on boat contract, Feb'y 12	25 00
	" " Peter Cooper for stone for ferry boat, Feb'y 13	2 00
	" " Nath'l Coons for 18 days' work to Feb'y 26	18 50
	" " Perno, March 1st	34 00
	" " Geo. J. Reid, March 1st	83 13
	" " Wm. N. Byers, March 6	12 50
139		297 13

4. *Dr. E. Lowe.*

4.	To cash loaned E. S. Pleyel	10 00

Thos. Davis, to Council Bluffs & N. Ferry Co.

For balance on lots	50 00

4. *Cash, Dr.*

To Dr. S. M. Ballard for bal. capital stock, March 8	375 00
Received of Lemon in ferriage	13 00
	388 00

Council Bluffs & Nebraska Ferry Co.

4. To cash paid Iowa Republican office for bill publishing, M'ch 8	40 00
" " O. F. Lake for 1 day's work, March 20	2 00
" " man for securing skiff, March 29	50
To bills receivable for Wells note paid by Harding, Ap'l 2	34 29
To cash pd. Wells bal. of bill pr. do. Ap'l 2	26 70
Perno pd. him	34 00
C. B. & N. F. Co. paid:	
J. N. Crenshaw, work on ferry, April 5	4 50
Cash paid to get skiff	5 00
Paid Hall for work on ferry	12 00
Cash paid Wm. N. Byers, pr. ac't	8 00
	166 99

Bills receivable, Dr. to sundries.

To Mr. Lathrop for J. M. Latham's note	50 00
C. B. & N. F. Co., for Chas. B. Smith's, due Ap'l 2	280 00
Chas. B. Smith, dated Jan'y 20, 6mo	280 00
Chas. B. Smith, " 20, 12mo	280 00
Wm. H. Hoover, " 20, 6mo	125 00
W. H. Hoover, " 12mo	125 00

COUNCIL BLUFFS CITY, *April,* 1855.

Bills receivable, Dr.

To C. B. & N. F. Co. for H. C. Purple's note, dated Jan'y 20, 3mo	134 00
For H. C. Purple's note, dated Jan'y 20, 3mo	122 00

140 *Council Bluffs & Nebraska Ferry Co.*

To bills receivable for T. B. Cummings's notes, for his 2 notes for capital house, Ap'l 10	3, 800 00
4. To cash paid L. B. Burgess bill of work, Ap'l 13	40 95

Cash, Dr.

To Jas. Redfield to pay on boat, Ap'l 13	125 00
15. Wm. Tanner rec'd of Larimer on boat, April 16	125 00
ferry ac't for ferriages, Ap'l 16	58 50
Dr. E. Lowe to pay on ferry boat, Ap'l 16	250 00
Sam'l S. Bayliss on boat, Ap'l 17	250 00
Tootle & Jackson on St. ferry, Ap'l 17	250 00
Bills receivable for J. L. Byers's note of James, Apr. 23	75 00
	1, 133 50

Sundries, Dr. to Council Bluffs & N. Ferry Co.

4. Cash rec'd for block 315, sold by E. Lowe to D. Remick	100 00
Bills recbl. " " for D. Remick's note	100 00
	200 00

Council Bluffs & Nebraska Ferry.

4. To cash paid Ferris		2 25
" Jackson and Lemons passage to St. Js. Apr. 16		20 00
" remitted to Col. S. R. Curtis, 2 drafts, one $812 00, one $500 00	1,312 00	1,342 10
" paid discount and exchange for draft	30 10	
" " Capt. McIntosh, April 23		45 00
" " Jackson & Lemon expenses		18 80
" " Capt. McIntosh expenses for brig Mary Cole		300 00
1 paid S. W. Higby		11 90
To S. Atchins for fettering boat		283 00
To cash pd. for hauling, &c., from wreck of Mary Cole		4 00
" " Lemmon, May 4		35 00
" " by J. A. J. at Mary Cole		9 00
		2,070 75

4. *Cash, Dr.*

To bills receivable rec'd for C. B. Smith's note, ($280)	280 00
Henn & Williams rec'd of J. Cooper, Ap'l 28, part of assessment on boat	175 88
Henn & Williams rec'd, J. Cooper, May 2	50 00
Henn & Williams " " 3	24 12
ferry a'c. rec'd of Ben. Sperry for ferriages	25 20
	555 20

141 *Council Bluffs & N. F. Co.*

4. To cash p'd. M. Keiffer, May 7	74 00
" " " Ben. Sperry, May 7	43 00
" " " Jas. Goodwin, May 7	20 00
" " " Napier for hauling, May 7	3 50
" " " J. D. Bayliss do. May 8	4 00
" " " Jas. Daily, on ac., May 9	5 00
" " " S. S. Paine for work at Mary Cole, May 9	34 50
	184 50

4. *Cash, Dr.*

To Council Bluffs and Nebraska Ferry, rec'd for bill of Dr. Lowe, May 7	50 00

Council Bluffs & N. F. Co.

4.	To cash p'd Paine for G. Revier's order for 5½ days' work	16	50
	" " " Jas. Hedge	5	00
	" " " Kirkpatrick work on Mary Cole, May 12	3	25
	" " " Wm. Knight, pr. Dr. E. Lowe's order, May 12	15	00
	" " " Mr. Perno 5 days' work, May 12	15	00
	" " " Mr. Richmond, 4 days' work, May 12	12	00
	" " " Stately, 2 days, $2, May 12	4	00
	" " " Walcott, 1 day	2	00
	" " " H. C. Lemmon	41	00
		113	75

Council Bluffs & Nebraska Ferry Co.

4.	To cash p'd Tarbox for hauling from Mary Cole	22	00
	To cash p'd Garrage for wood, p'd some time ago	10	00
	To cash p'd Garrage for wood	56	00
	" " " for board at Mary Cole	14	75
		102	75

4. *Cash Dr:*

To C. B. & N. F. Co. rec'd of Tarbox, May 22, for lumber, doors, and windows	34	80
To C. B. & N. F. Co. rec'd of Mr. Lucas, May 23		50
" bills rec'bl. for W. W. Hoover's note, June 7	125	00
" C. B. &. N. F. Co. rec'd received of Lafferty for lumber	12	00
Wm. B. Street assessment on boat, rec'd of M. F. Shinn, June 28	125	00
	297	30

142 *Mr. Micklewait, Dr.*

	Lumber at Mary Cole of Lucas	2	15
4.	Rec'd for lots 6, 7, 8 in block 77, and lot 3 in block 149	400	00

Bills Receivable.

To C. B. & N. F. Co. for Mills note for lots, June 8	50	00

Council Bluffs & N. F. Co..

4.	W. N. Byers for Sun'y	50	00

Cash.

June 11.	Paid to Tootle & Jackson	300	00
		350	00

4. *Cash D. received C. H. Downs.*

June 11.	On capital stock	300	00

2005

C. B. & N. F. Co.

4.	To cash, W. N. Byers Dr. to cash	172 00

4. *Cash, Dr.*

	To Council Bluffs & N. Ferry Co. for lots 4 and 5 in block 103, sold by Palmer	100 00

Council Bluffs & N. Ferry Co.

4.	To cash p'd Wm. N. Byers, of correcting Richardson's map	6 00
	To cash " Jas. Goodwin for work on Mary Cole	13 00
		19 00

4. *Cash, Dr.*

	To C. B. & N. F. Co. rec'd for Ren. 140c. from Mary Cole	9 80

Council Bluffs & N. Ferry Co.

12.	To Wm. D. Brown and S. R. Curtis for work on grade, as per settlement, July 19, 1854	566 85
	Bill of work, rood, &c	104 20
		671 05

Cash paid out to Cravens by Byers.

	Order for sun'y	4 00

4. *Cash Dr. to C. B. & A. F. Co.*

	For 10 cords wood by K. Swing	40 00
	For lot No. 5 in block No. 138, sold to tarbox	100 00
	For cash of Hogoboom for lot 5 in B. 75	75 00
		215 00

143 *Council Bluffs & N. F. Co.*

4. *Dr. to Cash.*

	For am't p'd Hall for Sarlcom	2 00
Aug. 25.	Paid Reed for hauling from M. Cole	5 00
		7 00
4.	Rec'd of bills receivable on C. B. Smith's note	280 00

Aug. 31. *Council Bluffs & N. F. Co., Dr.*

4.	To cash for am't p'd Miclewait on account	50 00

4. *Cash Dr. to C. B. & N. F. Co.*

	For am't rec'd of Dr. Ballard	250 00

Council Bluffs & N. F. Co.

4. To cash p'd Dr. Lowe order to J. E. Johnson	30 00
“ “ “ J. E. Johnson's bill to Nov. 1854	93 00
“ “ “ Tootle & Johnson, Aug. 16	500 00
“ “ “ do do do	300 00
	923 00

Bills receivable, Dr.

To C. B. & N. F. Co. for Patrick McDonnough's note Sept. 27, due 1st January, 1856	20 00

Oct. 8, '55. *Council Bluffs & N. F. Co., Dr.*

4. To cash paid Tootle & Jackson	175 00

4. *Cash, Dr. to bills.*

Nov. 14. Receivable for am't received on Hoover's note	133 00
4. Tootle & Jackson, Dr. to cash	133 00

Council Bluffs & N. Ferry Co., Dr.

To C. H. Downs for am't of account as order of Pres't	35 16

C. H. Downs, Dr.

To bills receivable for G. M. Mills note	50 00
“ do. do. for collection	105 00

4. *Cash, Dr.*

To bills receivable for D. Remick's note, received draft from Coolbourgh & Brooks	99 00
To C. B. & N. F. Co. for am't rec'd on Vischers contract	100 00
To Bills recbl. for Pat. McDonnough's note	20 00
	219 00

144 JANUARY 31, 1856.

4. *Cash, Dr.*

To bill rec'bl. for M. Roger's note	100 00

4. *Cash, Dr.*

To bills rec'bl. for Mills note, collected by Downs	112 00

Council Bluffs & N. F. Co.

4. To cash paid by Downs to A. Davis, account boat work	51 21
“ “ “ W. Bent	9 37
“ “ “ Ottaway	4 37
“ “ “ Shoemaker	1 00
“ “ “ J. M. Young	1 25
	67 20

Feb'y 5.

Bills receivable.

To C. B. & N. F. Co. for John M. Thayer's note	300 00

4.	*Cash, Dr.*	
	To C. B. & N. F. Co. rec'd of A. J. Hanscom for Lot 5,77....	200 00
Feb. 19.	On J. M. Thayer's note	300 00
		500 00

Council Bluffs N. F. & Co.

4.	To cash p'd A. J. Poppleton, retaining fee	25 00

Council Bluffs & N. Ferry Co.

4.	To cash of Tootle & Jackson,	Jan'y 18	99 00
	" " "	Feb'y 15	100 00
	" " "	" 26	100 00
	" " "	" 30	20 00
	" " "	Feb'y 11	175 00
	" " "	" 19	300 00
			794 00

Cash, Dr.

To To C. B. & N. F. Co. rec'd of E. Lowe for lot sold to Hogeboom, for Tucker, Feb'y 28	60 00

C. B. & N. F. Co. Dr.

4.	To cash p'd Tootle & Jackson, Feb. 28	60 00

145 *A deposition of D. W. Price, taken in pursuance of the commission hereto annexed.*

The said D. W. Price, being by me first sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the interrogatories hereto annexed.

In answer to the first interrogatory saith:

My name is D. W. Price; I am an attorney by profession. I now, and for eight years have lived at Council Bluffs, Iowa, and have practiced law there during my residence.

To the second interrogatory he saith:

I have known Brown nearly eight years, S. R. Curtis, nearly eight years, and H. T. and S. S. Curtis, three or four years, when they first came west.

To the third interrogatory he saith:

I was employed by Brown in the year 1854, as his counsel in reference to a controversy between him and S. R. Curtis, growing out of a contract made by them August, 1853, for the sale by Brown to Curtis of a portion of his interest in the Council Bluffs Nebraska Ferry Company.

To the fourth interrogatory he saith:

Shortly after the first division of lots by the ferry company, as Brown's attorney at Council Bluffs, Iowa, I informed S. R. Curtis, that he had failed to perform the stipulations on his part in said contract contained, both in respect to the payment of assessments, and of the eight hundred dollars, as Brown claimed, and required him, on behalf of Brown, to fulfil those stipula-
146 tions, and informed him that in case of his failure to do so immediately, Brown would treat the contract as void. S. R. Curtis, in reply, said that he would see Brown about the matter. He would not do anything about the matter then, and refused to make any adjustment of the matter. This conversation took place at the Pacific house.

To the fifth interrogatory he saith:

I do not.

D. W. PRICE.

STATE OF IOWA,
County of Pottawattamie, ss:

I R. L. Douglas, the commissioner mentioned in the annexed commission, hereby certify, that D. W. Price was, on the 17th day of May, 1861, produced before me, and first sworn to testify the truth, the whole truth, and nothing but the truth, in answer to the annexed interrogatories; and his deposition, as above, reduced to writing by me in his presence, and by him subscribed before me, and his said deposition is as above stated.

Witness my hand this 17th day of May, A. D. 1861.

R. L. DOUGLAS, *Commissioner.*

147 Interrogatories to be administered to D W. Price, a witness to be produced, sworn and examined on behalf of the complainant, upon the commission hereto annexed, issued out of the district court in chancery, of the Territory of Nebraska, for the first judicial district, within and for the county of Douglas, wherein William D. Brown is complainant, and Samuel R. Curtis, Henry T. Curtis, and Samuel S. Curtis are defendants.

First interrogatory: What is your name, occupation, and place of residence; and how long have you resided at the place of your present residence, and been engaged in your present profession?

Second interrogatory: Do you know the parties in the title to these interrogatories named, any or either, and which of them, and how long have you known them, respectively, or such of them as you do know?

Third interrogatory: If in answer to the first interrogatory, you answer that you are a counsellor-at-law, were you ever employed by the complainant as his counsel in reference to any and what matter of difference between him and the defendant, Samuel R. Curtis; if so, when and what did you on his behalf do in the premises? Declare fully.

Fourth interrogatory: Did you ever make any demand of and upon said Curtis, and the Council Bluffs and Nebraska Ferry Company, in respect to the said matter of difference between them, at the request of said complain-
148 ant; if so, when, where, of whom, for what purpose, and what was at the time or times thereof, each and every thereof, by you, and by said Curtis, and by said company, then and there said and done?

Last interrogatory: Do you know any other matter or thing connected with the matter in controversy in this suit, necessary or material for the complainant therein; if, so, set forth the same as fully as if you were particularly interrogated in respect thereto.

The district court of the first judicial district of the Territory of Nebraska, within and for the county of Douglas, Territory of Nebraska, to R. L. Douglas, of Council Bluffs, Iowa, greeting:

Know you, that we having full faith in your prudence and competency, have appointed you commissioner, and by these presents do authorize and require you to examine, upon interrogatories annexed to this commission, D. W. Price, in a certain cause pending in this court, wherein William D. Brown is plaintiff, and Samuel R. Curtis *et als.* are defendants on oath, to be you administered, to take and certify the depositions of the said witnesses, and return the same in accordance with the statute in such case made and provided.

149 Witness the Hon. Augustus Hall, judge of the district court of the first judicial district, at the city of Omaha, on the 17th day of May, A. D. 1861.

[SEAL.]

E. B. CHANDLER,
Register.

Agreement between Tanner & Downs and complainant, introduced and read on the hearing.

This is to certify that whereas the undersigned, by certain deeds of transfer, executed and delivered on the twenty-fifth day of Ap'l, 1854, granted, bargained, sold, and transferred to Charles H. Downs & William Tanner an undivided $\frac{1}{8}$ interest in the lands therein described, and also an undivided one-eighth interest in certain ferries situate on the east and west sides of the Missouri river, at points connected with said lands, in consideration of the sum of fourteen hundred dollars, seven hundred of which said purchase money was paid by the said Downs & Tanner to the undersigned, the balance, seven hundred dollars, secured by promissory note dated on the aforesaid twenty-fifth of April, 1854, and due and payable one day thereafter; and whereas at the aforesaid sale and transfer there were certain incumbrances transferred in the manner of debts incurred by way of necessary expenditures on boats and for work and labor performed: Now, therefore, this witnesses that the undersigned
150 obligates himself to discharge said debts and free said interests, transferred from all incumbrances before collection of the aforesaid promissory note, and said promissory note was drawn with the express understanding aforesaid. And the undersigned further obligates himself to transfer to the aforesaid Downs & Tanner all his undivided one-eighth interest in the receipts accrued at said different ferries from the commencement of the present ferrying season, the said Downs & Tanner bearing and paying therefor the undersigned's proportion of the expense attendant upon the said ferrying business for the period last aforesaid.

Given under my hand this 25th day of April, 1854.

Attest: J. D. BAYLISS.

And on the sixth day of July, one thousand eight hundred and sixty-one, and at the April term thereof, the honorable William P. Kellogg, chief justice and judge of the said district court, presiding therein, the said cause came onto be heard upon the foregoing pleadings and proofs and exhibits, and was argued by James M. Woolworth, of counsel for the complainant, and George B.
151 Lake, of counsel for the defendants; and the said judge having considered of the matters so as aforesaid urged on behalf of the respective parties by their said counsel, found the equities of the said cause to be with the said defendants, and therefore made and entered in said cause an order dismissing the bill of complaint of the said complainant in the words and figures following, that is to say:

At a district court, in chancery, of the Territory of Nebraska, for the first judicial district, held at the city of Omaha, within and for the county of Douglas, on the sixth day of July, one thousand eight hundred and sixty-one—

Present: the honorable William P. Kellogg, judge.

William D. Brown,
vs.
Samuel R. Curtis *et al.*

This cause came on to be heard upon the pleadings, depositions, and exhibits, consisting of the books of the secretary and treasurer of said company, the admission, by complainant, that the defendant, Samuel R. Curtis, made a tender, as in his answer alleged, and of the copy of the agreement made between the complainant and Tanner & Downs, and was argued by counsel, and the 152 court being fully advised in the premises, it is ordered that the complainant's bill of complaint be, and the same is hereby, dismissed with costs against said complainant, who thereupon prays an appeal to the supreme court.

WM. P. KELLOGG, *Judge.*

Territory of Nebraska,
First Judicial District, County of Douglas, ss:

I. Erastus B. Chandler, register in chancery of said district, do hereby certify that the foregoing are true and correct copies of the record remaining in this office and the whole thereof.

[seal.] Witness my hand, and the seal of said court, this 1st day of August, A. D. 1861.

E. B. CHANDLER, *Clerk.*

Filed February 27, 1863.

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Supreme Court of the United States.

No. 121.

SAMUEL R. CURTIS *et al.*, APPELLANTS,

vs.

WILLIAM D. BROWN.

BRIEF AND POINTS FOR THE APPELLEE.

This is an appeal from a decree of the Supreme Court of the Territory of Nebraska. The appellee filed his bill in the District Court in Chancery for the First Judicial District of that Territory, alleging a case, of which the following is a summary statement:

The appellee was in August, 1853, a member of the Council Bluffs and Nebraska Ferry Company, owning one-fourth of its capital stock. This company had for its object the building of a town on the site of the present city of Omaha; and to this object its business as a Ferry Company and of trading with Indians, etc., was subsidiary. On the 15th of August, he sold an undivided half of his interests to the appellant, Samuel R. Curtis, by articles of agreement set out in full at folios 13—15 of the record. This was a present grant of these interests, "in consideration," as therein stated, "of the payment to" the appellee "of the sum of money thereinafter stipulated, and the performance of the condition thereinafter expressed, by Samuel R. Curtis," and the grant was expressed to be upon three conditions, the second and third of which are as follows: "If the said party of the second part shall, during his possession of the interests aforesaid," * * * "pay or furnish the proportional parts, quotas of himself and the said party of the first part, of the means requisite to the making of roads, grades, and fences, and whatever is deemed necessary by the Company to secure the claim on the west side of the river; and further, if the said party of the second part shall pay or cause to be paid to the said party of the first part, out of the first dividends arising from the proceeds and operations of the said Company, and coming and payable to the said party of the second part, by virtue of the aforesaid interest as stockholder in said association, the sum of eight hundred dollars." In case of the performance of these conditions, "the transfer and sale" was to be "absolute and valid; otherwise, in case of failure of the aforesaid party of the second part to comply with the terms and conditions hereinbefore set forth and specified, the sale, transfer, or assignment, shall become of no effect and inoperative; and all the interests thereby intended to be conveyed shall revert to, and become reinvested in, the said party of the first part."

In furtherance of its design of building the town of Omaha, the Company executed divers considerable improvements, and particularly built a road through a deep and impassable swamp in Iowa. Assessments were levied to defray these expenses. Curtis failed to pay them, and in consequence Brown was compelled to pay them. On the 19th of July, 1854, the Company divided among its members its lots in the town of Omaha, assigning sixteen to Curtis. These lots were at the time worth $50 each; and during the next year, interests like those sold by Brown to Curtis were worth and sold for $30,000. Shortly after the making of this dividend, Brown applied to Curtis for the payment of the unpaid assessments and of the $800; and notified him that if he failed to pay the same, the contract would be treated as void; and notwithstanding Curtis neglected to pay both the assessments and the $800, until the 6th of April, 1856, when he tendered to Brown the $800.

Curtis, by divers false representations, induced the Company to continue him as a member, and to assign very many other lots to him. Brown entered into these lots in 1854 and 1855, and sold many of them as his own. In May, 1856, Curtis restrained Brown by injunction out of Chancery from asserting title to these lots; and he remained so restrained until October, 1858, when Curtis dismissed his bill. Meanwhile, the Mayor pre-empted the town site under the municipal pre-emption act, and deeded the lots to Curtis, without notice to or the knowledge of Brown, and Curtis sold many lots, from which he realized $5,000.

The Company also owned lands in Iowa, which it has divided among its members, deeding many to Curtis as a member of it. The interests in the Ferry Company have been

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transferred to Henry Z. and Samuel S. Curtis. The bill prays that the lots in Iowa be conveyed to the appellee, that the company admit him as a member of it, and exclude the defendants therefrom, and that Samuel R. Curtis account for the moneys realized by him from the sale of the lots, and for general relief.

Samuel R. Curtis filed a several answer, which was verified by his solicitor. Henry Z. and Samuel S. Curtis filed a joint answer, which was verified by Henry Z. and the solicitor of Samuel S. The ferry company answered, submitting the decree of the court.

Replications having been filed, proofs were taken on the part of the appellee, the appellants producing none, and an order made by the District Court dismissing the bill. The cause was taken to the Supreme Court, which reversed this order, and made a decree according to the prayer of the bill.

Mr. Justice Streeter delivered the opinion of the Supreme Court as follows:

"The appellant and complainant below bases his claim for relief upon the alleged forfeiture of the defendant, Samuel R. Curtis, to perform the conditions of a certain contract, in writing, entered into by the said complainant and the above-named defendant, and which said contract is in the words and figures following:"

His Honor here read the contract from the bill.

"It will be perceived that Curtis bound himself in this contract, among other things,

First—To pay or furnish the proportional parts, quotas of himself and Brown, of the means requisite to the making of roads, grades, and fences, and whatever is deemed necessary by the Company to secure the claim on the west side of the river.

Second—Should pay or cause to be paid to Brown, out of the first dividends arising from the proceeds and operations of the Company, and coming and payable to him, by virtue of the interest aforesaid as stockholder in said association, the sum of eight hundred dollars.

It is claimed that Curtis has failed to perform his contract in both of the particulars above set forth. Before proceeding to examine the evidence, with a view to ascertain whether or not the allegations in the bill are sustained by proof, it is necessary to determine what amount of testimony it is incumbent on the complainant to adduce in order to sustain his bill, the defendants failing to produce any evidence whatever. The bill calls on all the defendants to answer under oath. Samuel R. Curtis answers separately, and the answer is verified by his solicitor. Henry Z. and Samuel S. Curtis answer jointly and severally, denying, mainly upon information and belief, most of the material allegations in the bill, Henry Z. verifying the answer as to himself, and the solicitor verifying it for Samuel S. The answers are replied to by the complainant.

As a general rule, where the complainant calls upon the defendant for answer under oath, it requires at least two credible witnesses, or their equivalent, to overcome the answer, when it is directly and fairly responsive to the allegations of the bill, and the facts stated are within the personal knowledge of the defendant. This rule, however, only applies, as we think, when the answer and verification are that of the defendant in his own proper person. The complainant makes him his witness, and seeks to sift his conscience in reference to the subject-matter in controversy. He cannot testify by proxy any more than could a witness who is not a party to the proceeding. The answers of Samuel R. and Samuel S. Curtis, therefore, not being sworn to by them, but by their solicitors, can only be allowed to have the same force and effect as unsworn answers—that is, pleadings merely. The answer of Henry Z. Curtis, as to the material allegations of the bill, being upon information and belief, stand upon the same footing as the answers of the other two defendants, and can only have like effect. (2 Daniel's Ch. Pr., 1019, n. 2, 1021, n. 1.) Hence we conclude the complainant is not bound to produce any other or greater proof to sustain his bill than as though these several answers had not, in any manner, been verified.

The evidence produced by the complainant is quite voluminous, and a recapitulation of it here is not deemed necessary. It is sufficient to say that all the material allegations of the bill are proved by at least one, and some of them by more than one, witness.

The facts alleged in the bill being established, as we think, by competent evidence, the question then arises, is the complainant entitled to the relief he seeks, or to any relief whatever? The solution of this question depends upon the construction to be given to the instrument above recited. We hold that it is a conveyance *in presenti* by Brown upon a condition subsequent. The whole interest sought to be transferred by Brown vested in Curtis, subject to be defeated by his failure to perform the conditions therein expressed.

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Conditions subsequent are not favored at law or in equity, and in all courts are strictly construed. Yet, as in all other contracts, the obvious intention of the parties as expressed in the contract itself must control; and that is to be determined by the application of good sense and sound equity to the object and spirit of the contract, in any given case. (Nicol *vs.* N. Y. & Erie R. R., 2 Kernan, 121; 3 Peters, 346.) There cannot, as it seems to us, be any doubt as to the intention of the parties to this contract, at the time of its execution; and that was, that the interest granted should revert to and become revested in Brown, upon the failure of Curtis to perform the conditions therein specified. It appears from the evidence that he failed to pay the assessments made by the Company of April 5, 1854, of $430, and paid only half of the other two assessments of $375 each, when he was bound by his contract to pay the whole of them. It further appears that he failed to pay the $800 on account of the purchase, as stipulated. The dividends referred to in the contract evidently contemplated—looking at the objects and interests of the Ferry Company, as shown by the pleadings and proofs—dividends of property as well as money. This $800 was to be paid out of the first dividend; which, as appears, was made on the 19th of July, 1854, and was of lots, sixteen of which fell to Curtis. They were, as the evidence shows, at that time worth in the market $50 each, and rapidly rising in value. Neither at this time, nor within a reasonable time thereafter, did Curtis offer to pay the $800 in money, or to turn over to Brown, in payment of the sum due to him, the proceeds of his dividend. In April, 1856, however, nearly a year and a half after the making of this dividend, and after the property, real estate as well as ferry franchise, had greatly enhanced in value, Curtis tendered to Brown the $800. It was too late. The evidence of the witness Price shows, that soon after this dividend of lots was made, he, as the agent of Brown, called on Curtis, and on behalf of Brown demanded the payment of the $800, and his, Curtis's, share of the assessments; that Curtis failed to respond to this demand; and that he then and there informed him of the intention of Brown to declare the contract void, by reason of Curtis's default, and reclaim the property thereby forfeited. From that time to the bringing of this suit Brown treated the contract as void, and at all times asserted his right to be restored to the possession of the property transferred by the contract. Curtis, by his acts, at least, claimed the right to pay the sum by him agreed to be paid at such time as might suit his convenience; acting evidently upon the idea that he might, if he chose, fail to comply with his contract, if it was not likely to prove a profitable speculation, and abandon it without loss; or if, after the lapse of a year or more in time, the speculation seemed likely to be advantageous pecuniarily, come in and pay, and thus take advantage of his neglect to pay as he had contracted. We think it is asking too much of a court of equity to sanction such a proceeding. On the other hand, a court of equity will, under similar circumstances, afford the vendor relief by rescinding the contract. (Kirby *vs.* Harrison, 2 Ohio St., 326; Leach *vs.* Leach, 4 Ind., 628.) This suit, however, is not in any sense one to aid a forfeiture; because, by the act of Curtis and the true construction of the contract, his right ceased and the whole legal interest reverted to Brown in 1854, when the default happened. The whole equitable title was in Brown when the suit was commenced, and the aid of the Court was not required to forfeit the estate and confer it upon Brown. But after the default of Curtis, and his rights under the contract had determined, he procured the legal title from the Company and the Mayor of Omaha to various lots mentioned in the bill, belonging to Brown, which he still holds as his own. Nothing can be clearer than that a court of equity has power to compel him to transfer this property to Brown, and adequate relief can only be obtained in a court of equity. For the same reason, Brown can proceed in a court of equity to compel Curtis to account for the proceeds of the property sold, and compel him to do everything to place Brown in the same position, as a member of the corporation, which he would have had but for the transfer to Curtis.

Henry Z. and Samuel S. Curtis stand in no better position than Samuel R. Curtis. The evidence discloses that whatever interest they may have acquired in the property in controversy was with the full knowledge of Brown's rights, and his claims in respect to it.

The Ferry Company have no interest in the controversy between these parties, and proposes to be content with whatever decree the court may make.

The opinion of the court therefore is, that the complainant is entitled to the relief prayed for in his bill.

The decree of the District Court is reversed, and a decree must be rendered in this court, in accordance with the prayer of complainant's case.

Decree reversed.

POINTS FOR THE APPELLEE.

I.

Article 5 of the articles of association (folio 98) makes the capital stock $11,000, of which $8,000 was assigned to the ferry on the east side of the river, and $3,000 to the Nebraska side. Brown owned one-fourth of the capital stock, and assigned to Curtis an undivided half of his interests.

Assessments were made by the Company as follows: August 13, 1853, 33⅓ per cent. on the $8,000 was called in, and applied to the purchase of a steamboat. (See folios 102 and 129.) This assessment, made two days before the sale by Brown to Curtis, may be excluded from the calculation.

October 12	—One-fourth of the capital stock was called in to pay for the ferry boat, (folio 103,) and the money advanced to Brown and Curtis by the other stockholders to discharge their quota, (folio 130)	$500
December 24	—20 per cent. on the $8,000 was called in (fol. 103) for the same purpose	400 00
April 5, 1854	—21½ per cent. on the $8,000 was called in (fol. 106)	430 00
July 19, "	—50 per cent. on the $3,000 was called in (fol. 109)	375 00
October 4, "	—50 per cent. on the same was called in (fol. 110)	375 00
Making the whole amount which Curtis should have paid		1,980 00

We insist that Curtis should pay the whole of the assessments of October 12 and December 24, 1853, because, although the assessments were levied for the purposes of the ferry, the objects of the Company, as shown by the testimony of Lowe, who was, during this period, a clerk or secretary for the Company, were "to make a large claim of land and build a town where Omaha now stands."—(Fol. 82.) He says again, "The ferry was looked upon only as a bill of expense to the Company, and would be so for years. The money was expected to be made out of the town."—(Fol. 92.) And at folio 83 he says, "It," that is, the business of ferrying, "was only to be used as a means to help build up the town, and was looked upon as having only a nominal value."

Which testimony, we submit, sustains the allegations of the bill that the ferry was subsidiary to the enterprise of making the town. The expenses, therefore, of establishing and running the ferry were means deemed "necessary for securing the claim on the west side of the river," and were all to be defrayed by Curtis.

Lowe expressly states that the assessments of April 5, July 19, and October 4 were for purposes specified in the contract, (fol. 92–94,) so that the whole sum which Curtis was bound to pay was $1,980.

The only payments in fact made by him were as follows:

"January 12, 1854," (see fol. 130 in treasurer's book)	$200 00
July 19, (see fol. 133 in treasurer's book,)	187 50
February 3, (see fol. 137 in treasurer's book,)	187 50
It also appears that he did work for the company, (see folios 103–105, and 133,) on which he was, on the 19th of July, entitled to a sum which was passed to his credit of, (see fol. 133 bottom of page 54, where his account is adjusted)	262 97
Whole amount paid by Curtis	837 97

This leaves a deficiency of $1,142 03 unpaid by him.

On the 19th of July the Company was also indebted to Brown for work which he did for it, and this was applied to the payment of this deficiency. (See folios 108 and 142, page 63.) It amounted to	$671 05
Brown sold his remaining interests to Tanner and Downs on the 25th of April, and they paid on these assessments (see fol. 134) $93 75, and (fol. 142) $300	393 75
Amount paid by Brown and his grantees	1,064 80

Curtis undertook in his contract to pay these assessments, and the whole of them, so long as he continued a member of the Company.

The court below was content to inquire what Curtis's deficiency was upon the three assessments, unquestionably

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made for purposes expressed in the contract, and on these found him in default for the whole of that of April 5, $430, and half of those of July 19 and October 4, making together $375.

II.

On the 19th of July, 1854, the Company having surveyed the town site into lots, divided some of them among its members, assigning sixteen to Curtis, (folio 109;) and these lots were of the value of $50 each, (folios 85–88, and 93.) The object of the Company being the making of the town, its efforts being mainly directed to that adventure—as has been shown by the testimony of Lowe—and it being the custom in such enterprises to divide the lots among the proprietors instead of selling the lots and dividing the proceeds, we are entitled to claim that the dividends referred to in the contract were understood at the time to be of lots, so that Brown was entitled to the $800 on that day, or at a reasonable time afterwards. If that is not a fair construction, then he gave away this interest, for he could never expect to realize the $800 from money dividends.

III.

Shortly after this dividend was made, Brown, by his agent, Price, informed Curtis of his failure to pay the assessments and the $800, and required him to fulfil his stipulations in those respects, and informed him that if he failed to do so immediately, Brown would treat the contract as void. Still he declined to do anything in the matter, (folio 145.) Brown claimed to members of the Company that Curtis had forfeited his contract, and that he was entitled to be reinstated as a member, (folio 85.) Brown proceeded in 1854–55 to sell the lots assigned to Curtis, in pursuance of his notice to Curtis that he would treat the contract as void, unless payment was promptly made of the sums due under the contract.

Curtis not only neglected to pay the sums due from him, but stood by, suffering Brown to treat the contract as void until April, 1856. Before this the interests sold rose in value to $30,000, as the bill alleges at folio 19; and this is nowhere denied in the answer. Then Curtis tendered $800 to Brown, which was refused. This tender coming a year and nine months after the amount should have been paid, and after the property had so greatly appreciated in value, was too late; and being of only the eight hundred dollars, and not of the assessments also, which he had failed to pay, it was insufficient.

And now, so many years afterwards, he makes no offer in his answer of paying these sums, but proposes to keep this valuable property without ever paying a single dollar to Brown for it. He claimed a right to delay all payments to Brown, until assured by the event that he had made an advantageous bargain. He now claims that having enjoyed the property so long, he ought to be suffered to enjoy it forever.

We submit that Curtis by his own acts forfeited all rights under the contract, and that thereby the property reverted to and became reinvested in Brown.

McKay *vs.* Carrington, 1 McLean, 50, 53.
Garrow *vs.* Davis, 15 How., 272.
Stuyvesant *vs.* Mayor, etc., of New York, 11 Paige, 414, 427.

The acts of Brown should be deemed sufficient to determine the interests of Curtis. The entry required by the common law into the freehold was not necessary in estates less than freehold, and should not be required here, because the peculiar nature of the property relieves the parties of technical rules, and opens the door to the application of the evident intention of the parties. Nothing can be clearer than that, when these articles were entered into, the parties supposed that Brown would receive the property back, upon Curtis's failure to perform the conditions; prompt performance being required in order to save Brown's remaining interests. If this was so, then all that Brown had need to do, to give operation to the last clause in the articles, was some decisive act indicative of his purpose to claim the property. He could have done nothing more decisive than giving the notice to Curtis, claiming from the Company a right to be reinstated in it as member, in Curtis's place, and selling the lots.

IV.

It was after his rights had thus been determined by his own acts, that Curtis acquired from the Company and from the Mayor the legal title to the lots, without any notice to Brown of his application for them. This was clearly in fraud of Brown's rights. It was as if, never having had any interest in the property, he had fraudulently acquired the legal

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estate. So long as he held the legal title, Brown could assert his equity only in a court of chancery.

Even if this were a suit to enforce a forfeiture, equity would grant relief, because justice could not be secured at law.

Leach *vs.* Leach, 4 Ind., 628.
Jenkins *vs.* Jenkins, 3 Mon., 327.
Scott *vs.* Scott, 3 B. Mon.
Dearman *vs.* Cooper, 11 Verm., 103.
Kirby *vs.* Harrison, 20 St., 326.

V.

The property was proper subject of sale, whether it be considered as a mere expectancy (Story's Eq. Jr., sec. 1040 b.) or as an accumulation of the Company's estate in which the members were interested. The property reverting to Brown, he should receive from Curtis all that he would have had had he made no sale to him; that is, the shares in the Ferry Company, the lots in Iowa, which he still retains, and the proceeds of the sales of the lots in Omaha, less the sums which he has paid.

VI.

There is an entire failure on the part of the other defendants both to plead and to prove that they were *bona fide* purchasers for value, while the proof to the contrary is clear—(fol's 90 and 95 and 96.)

VII.

Even if we are entirely wrong, the Court will give us the $800 and the $671 05 which Brown paid on assessments, with interest from July 19th, 1854, at the rate of ten per cent. per annum—the legal rate of interest in Nebraska.

Wendell *vs.* Van Renssellear, 1 John. Ch., 344, 352.

JAMES M. WOOLWORTH,
J. M. CARLISLE,
of Counsel for Appellee.

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